

1                   UNITED STATES DISTRICT COURT  
2                   DISTRICT OF NEW JERSEY

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4                   ASSOCIATION OF NEW JERSEY  
5                   RIFLE & PISTOL CLUBS, INC.,  
6                   PLAINTIFF

7                   Vs.

CIVIL NO.  
18-10507 (PGS)

8                   GURBIR GREWAL, et al,  
9                   DEFENDANTS

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AUGUST 16, 2018

CLARKSON S. FISHER COURTHOUSE  
402 EAST STATE STREET  
TRENTON, NEW JERSEY 08608

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B E F O R E:           THE HONORABLE PETER G. SHERIDAN  
U.S. DISTRICT COURT JUDGE  
DISTRICT OF NEW JERSEY

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PRELIMINARY INJUNCTION HEARING - DAY 2

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Certified as true and correct as required  
by Title 28, U.S.C. Section 753  
/S/ Francis J. Gable

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1 THE COURT: Any matters before we begin?

2 MR. THOMPSON: Good morning, your Honor, David  
3 Thompson. No matters for the plaintiffs, your Honor.

4 MR. SHOWELL: None for the defendants as well,  
00:00 5 Judge.

6 THE COURT: All right, thank you.

7 MR. THOMPSON: And I believe our first witness, your  
8 Honor, will be Professor Donohue, and with the Court's  
9 permission my colleague, Mr. Patterson, will do the  
00:00 10 cross-examination.

11 THE COURT: All right. The witness can take the  
12 stand.

13 (JOHN J. DONOHUE, III), sworn

14 THE DEPUTY CLERK: State your name for the record.

00:00 15 THE WITNESS: John Donohue.

16 THE COURT: Thank you, Mr. Donohue. Once you're  
17 seated, could you just spell your last name?

18 THE WITNESS: Sure, D-o-n-o-h-u-e.

19 THE COURT: Thank you, Mr. Donohue.

00:01 20 You may proceed, sir.

21 MR. PATTERSON: Okay. And we have binders with some  
22 documents we're going to be referring to today; is it okay if  
23 we hand those out?

24 THE COURT: You may.

00:01 25 (Handing to the Court and witness.)

Donohue - Cross - Patterson

1 THE COURT: You may begin.

2 MR. PATTERSON: Thank you.

3 (CROSS-EXAMINATION OF MR. DONOHUE BY MR. PATTERSON:)

4 Q. Professor Donohue, you believe that the Supreme Court's  
00:02 5 *Heller* decision was wrongly decided; correct?

6 A. I think it was wrongly decided, yes.

7 Q. And you believe the Second Amendment has been the subject  
8 of fraud on the American public by special interest groups;  
9 correct?

10 A. That is a quote from former Chief Justice Warren Burger,  
11 and I think he correctly stated that.

12 Q. And you believe that the author of *Heller* came to embrace  
13 a fanatical view of the Second Amendment; correct?

14 A. I did think it was a incorrect and erroneous view of the  
00:03 15 Second Amendment, yes.

16 Q. And yes or no; you thought it was a fanatical view.

17 A. I thought it was clearly wrong-headed, yes.

18 Q. And I want to get the answer of whether you thought it  
19 was fanatical.

20 A. I think there was a fanatical dimension to that opinion  
21 in some respects, yes.

22 Q. Okay. And so if we can look at tab 24 in the binder,  
23 this is a Post Election Q & A Stanford Law School Faculty  
24 Weigh-in on the Election of Donald Trump. If we turn to page  
00:04 25 9 of this document, and the last full paragraph on the page,

Donohue - Cross - Patterson

1 you say: Justice Antonin Scalia came to embrace a fanatical  
2 view of the Second Amendment.

3 You wrote that; correct?

4 A. It does look like something I wrote, yes.

00:04 5 Q. Okay. And you've never --

6 THE COURT: Where is that? I'm sorry -- oh, I see  
7 it. Thank you.

8 Q. And you've never publicly opposed a gun control measure;  
9 correct?

00:04 10 A. Well, I haven't had a lot of opportunities.

11 Q. But you have not done that; correct?

12 A. I'm not aware, not that I was asked to in many cases.

13 Q. And if *Heller* had not established a constitutional right  
14 to own a handgun, you probably would vote yes if California  
00:05 15 held a referendum the ban handguns; correct?

16 A. I'd have to think about that, but I don't think it's  
17 going to happen any time soon, so it's not really relevant to  
18 my thinking.

19 THE COURT: So it's a hypothetical question; I don't  
00:05 20 think I'm required to have Mr. Donohue answer that.

21 MR. PATTERSON: Okay.

22 Q. Well let's play a clip from your deposition; page 28  
23 [sic - 27], starting at line 19.

24 (Portion of videotaped deposition of Professor  
00:06 25 Donohue held on August 9, 2018, is shown:

Donohue - Cross - Patterson

1 Q. So if California were to hold a referendum proposing  
2 to ban handguns and Heller were not decided, you would  
3 vote no?

4 A. That's an interesting question. If California, you  
5 know, if Heller hadn't been decided, so it was still an  
6 open issue, you know, and so I was just voting to express  
7 my own thought, I'd probably would support a referendum  
8 like that. So we're in a counterfactual world but, you  
9 know, getting rid of handguns obviously would reduce a  
10 lot of firearm violence.)

11 BY MR. PATTERSON:

12 Q. Do you recall giving that testimony?

13 A. I do.

14 Q. And you're familiar with the federal assault weapons Juan  
00:06 ban that was in place from 1994 to 2004; correct?

16 A. Yes.

17 Q. And part of that legislation was a limitation on magazine  
18 capacity; correct?

19 A. Yes.

20 Q. Do you believe that the prevalence of ammunition  
21 magazines capable of holding more than 10 rounds in the United  
22 States has increased since 1994 when that legislation went  
23 into effect?

24 THE COURT: Before answer that; can you repeat that  
00:07 question?

Donohue - Cross - Patterson

1 MR. PATTERSON: Yes. I hope I get it the same.

2 Q. But do you believe that the prevalence of ammunition  
3 magazines capable of holding more than 10 rounds in the United  
4 States, has increased since 1994 when the federal assault  
00:07 5 weapons ban went into place?

6 A. Unfortunately I think that is true, yes.

7 Q. Okay. Let's turn to tab 1 --

8 THE COURT: Before you go; so when he says  
9 prevalence of ammunition magazines, do you know what that  
00:07 10 means?

11 THE WITNESS: I think he just means that the number  
12 of these magazines that are in the public domain has risen  
13 since the time when they were initially banned in 1994.

14 THE COURT: So there's more magazines.

00:08 15 THE WITNESS: I think that's what he means.

16 THE COURT: Held by individuals within the United  
17 States.

18 THE WITNESS: Um-hmm. That's the way I understood  
19 the question.

00:08 20 MR. PATTERSON: That is how -- what I meant to ask,  
21 your Honor.

22 Q. And if you could turn to tab 1, and that consists of your  
23 declaration that you submitted in this case. Tab 1 is the  
24 declaration you submitted in this case.

00:08 25 A. Yes.

Donohue - Cross - Patterson

1 Q. And I'm going to refer to paragraph 13.

2 A. Yeah.

3 Q. And you say: Over the last few decades the number of  
4 households owning firearms has been declining, currently down  
00:08 5 to about 31 percent of Americans households. Correct?

6 A. Yes.

7 Q. And this opinion is based on data from the General Social  
8 Survey; correct?

9 A. General Social Survey and other surveys that are  
00:09 10 available.

11 Q. And in discussing gun ownership trends --

12 THE COURT: I'm sorry; I missed where that cite was  
13 to.

14 MR. PATTERSON: The first sentence of paragraph 13,  
00:09 15 I'm sorry, your Honor?

16 THE COURT: What document.

17 MR. PATTERSON: Tab 1, it's his declaration, so  
18 we'll be referring to that off and on?

19 THE COURT: Thank you.

20 BY MR. PATTERSON:

21 Q. And in discussing gun ownership trend in your  
22 declaration, you primarily focused on household gun ownership;  
23 correct?

24 A. Yes.

25 Q. And if you turn to paragraph 16 of your declaration, it

Donohue - Cross - Patterson

1 starts on the next page -- actually 15 and 16. So 15 says:  
2 GSS data from 2016, the most recent year that data is  
3 available, states that 30.8 percent of American households  
4 have at least one gun.

00:10 5 And then skipping down to the next paragraph you say:

6 This is a considerable drop from the approximately 50 percent  
7 of United States households with one or more guns in the late  
8 1970s.

9 Correct?

00:10 10 A. That's correct.

11 Q. And households in the United States have been getting  
12 smaller since the 1970; correct?

13 A. Yes, I think that's correct.

14 Q. And you would expect the number of households owning guns  
00:10 15 to decrease along with household size; correct?

16 A. You know, without knowing more that seems reasonable.

17 Q. Okay. And if we turn to tab 2 now in the binder.

18 A. Yeah.

19 Q. This is an article, Recent Trends in American Gun  
00:11 20 Prevalence that you and a co-author published in 2017;  
21 correct?

22 A. Yeah -- I mean that's when I finished this, I haven't  
23 published this yet.

24 Q. Okay. So if we turn to page 2, there's a chart there  
00:11 25 showing both personal and household gun ownership trends in

Donohue - Cross - Patterson

1 the GSS, which is the General Social Survey; correct?

2 A. Yes.

3 Q. And the downward trend with respect to personal gun  
4 ownership is much less pronounced than the trend in household  
00:11 5 gun ownership; correct?

6 A. You know, I'm not totally sure, I'd have to sort of do  
7 the math, but they both are trending down. Maybe household  
8 ownership is trending down a little more rapidly.

9 Q. Well, rather than a drop of 20 percent points, the drop  
00:12 10 of personal gun ownership is only about 10 percentage points;  
11 correct?

12 A. Right, but the proportional drop is greater actually for  
13 the personal ownership. If you go from 30 to 20, that's a 50  
14 percent drop; and if you look at the drop in the household  
00:12 15 ownership from 50 to 30, that would only be a 40 percent drop.

16 So it depends on how you do the calculations really.

17 Q. Okay. So about half of the percentage point drop in  
18 household gun prevalence reported in your study may simply be  
19 due the changing household composition; correct?

20 A. Yeah, I don't think that that's true, I'd really have to  
21 do a more sophisticated calculation to know, but I think  
22 it's -- I think it's close enough to say all the indications  
23 we have from the General Social Survey is gun ownership,  
24 whether you're looking at individuals or the household seems  
00:13 25 to be trending down over this period.

Donohue - Cross - Patterson

1 Q. Okay. And if we turn to your study at page 8, there's a  
2 heading that says Hunting, and then the second to last  
3 sentence of the last paragraph on that page, you say:  
4 Americans' taste for hunting have abated steadily and  
00:13 5 substantially since the late 1970s. Correct?

6 A. Yes.

7 Q. And it's your opinion that declining interest in hunting  
8 is one explanation for the decline in gun prevalence you found  
9 in your study; correct?

00:13 10 A. Yeah, I do think that's part of it, yes.

11 Q. And you do not have any data indicating that there's a  
12 downward trend in gun prevalence for self-defense; correct?

13 A. I haven't done that analysis, so I can't really comment  
14 on that.

00:13 15 Q. So you don't have any data indicating that there is a  
16 downward trend in gun prevalence for self-defense; correct?

17 A. Yeah, all I have is the downward trend, but, you know,  
18 the refined explanations are less clear.

19 Q. So the answer to my question is no -- or yes, you do not  
00:14 20 have any data; correct?

21 A. Yes, we have no bananas I think is the --

22 Q. Okay. And we're going to turn back to your declaration  
23 now, paragraph 17, so this is under tab 1. So in footnote 3  
24 on that page you acknowledge that the most recent Gallup  
00:14 25 survey found that 39 percent of American adults live in a

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1 household that contains a gun; correct?

2 A. Yes.

3 Q. And this is substantially higher than the General Social

4 Survey finding; correct?

00:15 5 A. Yes, that's right.

6 Q. And unlike the Gallup poll, the General Social Survey is

7 conducted in person; correct?

8 A. In general that's thought to give better information than

9 telephone surveys.

00:15 10 Q. All other things being equal, wouldn't you agree that  
11 people are more likely to lie about a controversial question  
12 when being interviewed in person than when speaking to someone  
13 on the telephone?

14 MR. SHOWELL: Objection; calls for speculation.

00:15 15 THE COURT: Frank, can you repeat the question?

16 (Question read back by the reporter.)

17 THE COURT: If your background allows you to answer  
18 that question, Doctor, you can answer it.

00:16 19 THE WITNESS: You know, there's too much loaded in  
20 all other things equal to really give a helpful answer to  
21 that.

22 THE COURT: Thank you. Next question.

23 BY MR. PATTERSON:

24 Q. Okay. But you do believe that everybody lies is a good  
00:16 25 caution when somebody cites survey information that is

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1 potentially ideological loaded; correct?

2 A. I think you do have to be cautious about social responses  
3 on controversial topics, yes.

4 Q. Okay. If we turn to tab 3, this is a document that's  
00:16 5 from the Gallup Organization, and if you turn to page 11,  
6 there's a question, do you have a gun in your home; do you see  
7 that?

8 A. I'm getting there; okay, yes, do you have a gun in your  
9 home, yes.

10 Q. And it says for the most recent survey, that 42 percent  
11 of respondents had a gun in the household in October 2017;  
12 correct?

13 A. Yes.

14 Q. And your declaration's reference to the most recent  
00:17 15 Gallup survey actually refers to the October 2016 poll?

16 A. Yes.

17 MR. PATTERSON: Your Honor, this document was not on  
18 the exhibit list that we submitted; may I move this into  
19 evidence?

20 THE COURT: What document is that?

21 MR. PATTERSON: This is the one under tab 3.

22 THE COURT: Does anyone object?

23 MR. SHOWELL: This is the first we're seeing this  
24 document, Judge, we don't -- have not had a chance to review  
00:17 25 it. So I can't really comment on whether I have an objection

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1 with 25 seconds to examine the document.

2 THE COURT: You mean you've never seen this --

3 MR. SHOWELL: I've never seen this before.

4 THE COURT: All right. So I'll give you to 1

00:18 5 o'clock to make an objection. I'm not admitting it at the

6 present time.

7 MR. PATTERSON: Okay.

8 THE COURT: It's been published to me, so I don't

9 know how to handle that. Are you go to be asking further

00:18

10 questions?

11 MR. PATTERSON: Not about this document, but there

12 are a few other documents that are not -- that I may ask

13 about.

14 BY MR. PATTERSON:

00:18

15 Q. If we turn to now to tab 4, please.

16 A. Okay.

17 Q. And this is excerpts from a national academies press book

18 called Priorities For Research to Reduce the Threat of

19 Firearm-Related Violence; correct?

00:18

20 A. Yes.

21 Q. And this was a report conducted at the request of the

22 Centers For Disease Control; correct?

23 A. Was this the report that came out after the Newtown

24 shooting?

00:19

25 Q. The report from 2013, yes.

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1 A. Yeah, yes. So this was a National Research Council  
2 report in the wake of the Newtown shooting.

3 Q. And this report -- and you were one of the reviewers for  
4 this report; correct?

00:19 5 A. I was.

6 Q. And if we turn to page 5 out of 64, so 5-64 on the  
7 bottom, there's a heading Availability of Firearms.

8 A. Yes.

9 Q. And it begins: Guns are widely used for recreation, self  
00:19 10 protection and work in the United States, however it is  
11 difficult to determine the exact number and distribution of  
12 guns currently in homes and communities due to lack of data.

13 Correct?

14 A. Yes.

15 Q. And then the last sentence of that paragraph states: A  
16 December 2012 poll found that 43 percent of those surveyed  
17 reported having a gun in the home (Gallup 2013). Correct?

18 A. Yes.

19 Q. So of all the potential available surveys the National  
00:20 20 Research Council chose to refer to the Gallup poll; correct?

21 A. Well, you know, this was a report that was done very  
22 quickly, and it did have a number of mistakes in it, so I'm  
23 not sure how much I would put on the one reference to the  
24 Gallup poll. But as your own document showed the Gallup  
00:20 25 numbers have declined over time as well. So the point that

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1 I'm making is there is a downward trend over time, and I think  
2 all of the evidence supports that.

3 Q. Okay. So in your declaration you say that the Pew  
4 Research Center, like the General Social Survey, finds a  
00:20 5 persistent decline in household gun ownership over the past  
6 several decades. Correct?

7 A. Yes.

8 Q. Okay. And you quote a 2013 Pew report stating that in  
9 January 2013 Pew found 33 percent of respondents had a gun in  
00:21 10 their home; correct? If you go to tab 1 paragraph 16, if you  
11 need to refresh your recollection.

12 A. Okay. Tab 1; yes.

13 Q. So now if we go to tab 5, there is a chart on that page,  
14 and this chart consists of the Pew household gun ownership  
00:21 15 data starting with the 2013 poll you referenced in your  
16 declaration, and then continuing through the most recent Pew  
17 poll in April of 2017.

18 A. Um-hmm.

19 Q. And this shows an upward trend from 2013 to 2017;  
00:21 20 correct?

21 A. Yeah, I mean sort of an upward blip; again, you'd really  
22 need a longer time span to know if it's a trend or just sort  
23 of a sampling error.

24 Q. Okay. The most recent Pew poll reflected here found that  
00:22 25 42 percent of households had a gun; correct?

Donohue - Cross - Patterson

1 A. Yes.

2 Q. And that is essentially identical to the most recent  
3 Gallup poll; correct?

4 A. Yes, I think that's the figure that we just saw. But  
00:22 5 again the Gallup numbers that your own exhibit did show a  
6 decline over time, and that's really the point that I was  
7 trying to make.

8 Q. Well, you did opine in your report that 31 percent of  
9 American households owned a firearm; correct?

10 A. Again I was just reporting the General Social Survey on  
11 that, and that's because it is usually considered the best  
12 most comprehensive measure of these, you know, social  
13 indicators.

14 Q. Okay. And in your declaration -- well, let me ask. The  
00:23 15 General Social Survey data is not consistent with this Pew  
16 data I just showed you; correct?

17 A. Again, you really do want to do what I did I think, which  
18 is show the time trend over, you know, an extended period of  
19 time, and see what the trend is as opposed to the ups and  
00:23 20 downs. Clearly we don't think ownership rates of guns are  
21 moving by three or four percent in a certain year, but if you  
22 look at the surveys they will sometimes bounce around by that  
23 much, just as poll numbers and voter polls will tend to bounce  
24 around.

00:23 25 You have to remember that except for the General Social

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1 Survey which has quite a bit higher number of respondents, the  
2 Gallup and Pew surveys are smaller number, so they have a much  
3 larger sort of margin of error.

4 Q. In your declaration you also express the opinion that gun  
00:24 ownership is concentrated; correct?

5 A. Yes, that's right.

6 Q. And you rely for that opinion on a study by Azrael and  
7 others; correct?

8 A. Yes.

9 Q. I don't know I'm pronouncing that correctly. If you turn  
00:24 to tab 6, there's a study call The Stock and Flow of U.S.  
10 Firearms Results from the 2015 National Firearms Survey. Is  
11 this the study that you relied upon?

12 A. Yeah, it looks like it.

13 Q. Okay. If we turn to page 43 of this study, there's a  
00:24 heading Distribution Of Gun Ownership.

14 A. Okay.

15 Q. And in the first sentence under that heading, the authors  
16 report that the median gun owner reported only approximately  
00:25 two guns; correct.

17 A. Yes.

18 Q. And if we turn to page 44 of this study under Reasons For  
19 Gun Ownership, the authors state that 63 percent of gun owners  
00:25 reported that one of the primary reasons they owned their guns  
is for protection against people; correct?

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1 A. Yes, that's what it says.

2 Q. And for handgun owners the figure for that is 76 percent;  
3 correct?

4 A. Yes.

00:25 5 Q. In this case you offer the opinion that limiting the size  
6 of ammunition magazines --

7 THE COURT: I'm sorry, Mr. Showell, do you have an  
8 --

9 MR. SHOWELL: Yeah, I think -- respectfully I think  
00:25 10 Mr. Patterson is mischaracterizing the document, just because  
11 he's not asking what the document states. So for example,  
12 referring to page 44 of DX-8, the first figure that Mr.  
13 Patterson quoted and the reference to the primary reason was  
14 that they owned guns for protection against people; and the  
00:26 15 next figure 76 percent they owned primarily for protection.

16 Now it doesn't appear to me that that protection is linked to  
17 people as it was in the first example.

18 So, you know, we don't know whether these people  
19 live out in the woods where there's a lot of bears that they  
00:26 20 want to be shooting, I just think it doesn't adequately  
21 explain the document, that's all.

22 THE COURT: So what's your objection, you wish me to  
23 strike the question?

24 MR. SHOWELL: Yeah, I would.

00:26 25 THE COURT: All right. Do you wish to respond?

Donohue - Cross - Patterson

1 MR. PATTERSON: Well, I interpreted that to be  
2 stating that that was the same figure as for all guns.

3 BY MR. PATTERSON:

4 Q. But Professor Donohue, you would agree that this says  
00:27 5 that 73 percent of handgun owners reported that they owned one  
6 primarily for protection; correct?

7 MR. SHOWELL: Again I've got the object, Judge; Mr.  
8 Patterson made a reference to 73 percent --

9 MR. PATTERSON: 76 percent --

10 MR. SHOWELL: That document says 76 percent.

11 THE COURT: All right. With that correction you  
12 don't have any objections then?

13 MR. SHOWELL: I don't, your Honor.

14 THE COURT: All right. So you may answer that  
00:27 15 question.

16 THE WITNESS: Yeah, the document does say 76 percent  
17 reported they owned one handgun primarily for protection.

18 BY MR. PATTERSON:

19 Q. Okay. You offer the opinion in this litigation that  
00:27 20 limiting the size of ammunition magazines should save lives  
21 and reduce injuries; correct?

22 A. Yes, I did.

23 Q. And you have studied the effect of so-called  
24 right-to-carry laws on crime; correct?

25 A. Yes, I have.

Donohue - Cross - Patterson

1 Q. And those are laws that require state officials to grant  
2 individuals who meet certain objective criteria a license to  
3 carry a handgun in public; correct?

4 A. That's correct.

00:28 5 Q. If we turn to tab 7. This is a NBER working paper by you  
6 and some other co-authors, and the title begins Right-to-Carry  
7 Laws and Violent Crime; correct?

8 A. That's correct.

9 Q. And this paper reflects research you have done on  
00:28 10 right-to-carry laws; correct?

11 A. It does.

12 Q. And this is not a peer-reviewed paper; correct?

13 A. No, this is the working paper version of this document.

14 Q. Okay. And in this paper you analyze right-to-carry laws  
00:28 15 using three different methods of analysis, Panel Data, the  
16 Lasso and Synthetic Controls; correct?

17 A. Yes, I did.

18 Q. And the Panel Data analysis in this context involves  
19 comparing outcomes across time and states that adopt a  
00:29 20 particular policy to states that do not adopt that policy;  
21 correct?

22 A. That's correct.

23 Q. And the Lasso is a machine learning technique that is  
24 designed to see if you could come up with predictive factors  
00:29 25 that might correlate with changes in crime; correct?

Donohue - Cross - Patterson

1 A. That's correct.

2 Q. And a Synthetic Controls analysis involves comparing  
3 outcomes in a state that adopts a particular policy, to a  
4 hypothetical state consisting of an amalgamation of states  
00:29 5 that had a similar experience with the outcome in question  
6 before the policy change, but did not make that change  
7 themselves; correct?

8 A. That's correct.

9 Q. And you believe that the fact that your study found that  
00:29 10 these three different statistical approaches all suggest that  
11 right-to-carry laws increase violent crime constitutes  
12 persuasive evidence that any beneficial effects from gun  
13 carrying are outweighed by the increases in violent crime that  
14 these laws stimulate; correct?

15 A. Yes, that adoption of right-to-carry seems to stimulate  
16 violent crime.

17 Q. And this case is not about the right to bear arms outside  
18 of the home, but about the right to possess them in the home,  
19 so I'll not question you about your conclusions in this study.

20 But you have not done a comparable study on the issue of state  
21 laws limiting magazine capacity; correct?

22 A. No, it took me about 20 years to do this one paper, so I  
23 haven't spent that much time on the issue of the large  
24 capacity magazines.

25 Q. And you're not aware of any completed Panel Data analyses

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1 of state laws limiting magazine capacity; correct?

2 A. I do know some individuals are at work on that, but I  
3 haven't seen the results of that yet.

4 Q. So you're not aware of any completed Panel Data analyses  
00:31 5 on state laws limiting magazine capacity; correct?

6 A. That's correct.

7 Q. And you're not aware of any published peer-reviewed  
8 studies that have sought to compare the effects of different  
9 states' approaches to magazine capacity limits; correct?

00:31 10 A. Not state-wide analyses.

11 Q. And you're not away of any Lasso analyses of state laws  
12 limiting magazine capacity; correct?

13 A. That's correct.

14 Q. And you're not aware of any Synthetic Controls analyses  
00:31 15 of state laws limiting magazine capacity; correct?

16 A. That's correct.

17 Q. And the effects of reducing a state's magazine capacity  
18 limit from 15 rounds to 10 rounds, is not something that's  
19 been independently evaluated; correct?

00:31 20 A. Not to the same degree as my paper here.

21 THE COURT: I'm sorry; what's your objection, Mr.  
22 Showell?

23 MR. SHOWELL: I think the question is ambiguous to  
24 the extent that it references I believe it was studies, and we  
00:32 25 don't know whether Mr. Patterson's referring to published

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1 studies, peer-reviewed studies, Internet studies, we just  
2 don't know the quality of what Mr. Patterson's driving at.  
3 That would be the basis for my objection.

4 THE COURT: All right, overruled.

00:32 5 MR. PATTERSON: Okay.

6 THE COURT: I think it was studies, and the doctor  
7 in his answer was answering in terms of all kinds of studies.

8 MR. PATTERSON: And I actually asked whether that's  
9 been something that's been independently evaluated and did not  
00:32 10 use the word studies in that question.

11 BY MR. PATTERSON:

12 Q. So if we turn back to your paper, the one that we're on  
13 now, if we go to page 18 --

14 THE COURT: What tab are we in?

00:32 15 MR. PATTERSON: We're on tab 7. And there's a table  
16 on that page entitled Table Of Explanatory Variables For Four  
17 Panel Data Studies; correct?

18 A. Yes.

19 Q. And when conducting this type of analysis you try to  
00:33 20 control for factors that might explain any change in violent  
21 crime; correct?

22 A. That's correct.

23 Q. And looking at the table there's a column labeled  
24 Explanatory Variables, and then four additional columns to the  
00:33 25 right of that starting with DAW; correct?

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1 A. That's correct.

2 Q. And DAW is your study; correct?

3 A. That's true.

4 Q. And the Xs under that heading are the explanatory  
00:33 variables you used in your analysis; correct?

5 A. That's correct.

6 Q. And you sought to control for factors that could explain  
7 any change in violent crime; correct?

8 A. Yeah, all of the studies I reference try to control for  
00:33 factors that would have a major impact on overall violent  
9 crime.

10 Q. And you did not control for whether the state has an  
11 ammunition capacity limit; correct?

12 A. None of the studies controlled for that.

13 Q. And you don't think that this affects the validity of  
14 your results; correct?

15 A. I don't, no.

16 Q. And that is because you believe that magazine capacity  
17 limits have a small impact on overall violent crime rates;  
00:34 correct?

18 A. Yeah, the bigger impact of magazine bans would be on mass  
19 shootings and public active shooting events.

20 Q. And you believe they have a small impact on overall  
21 violent crime rates; correct?

22 A. Yeah, because violent crime is an enormous category,

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1 including everything from rape and aggravated assault to  
2 robbery and murder.

3 Q. Okay. Now, if we turn to tab 8, this is excerpts from a  
4 study by Christopher Koper entitled Updated Assessment of the  
00:35 5 Federal Assault Weapons Ban. You're familiar with this study;  
6 correct?

7 A. I am.

8 Q. And it was commissioned by the federal government;  
9 correct?

00:35 10 A. Yes.

11 Q. And the federal assault weapons ban that we discussed  
12 earlier, that was a nationwide ban; correct?

13 A. Yeah, it wasn't as complete a ban as New Jersey has now  
14 adopted, but it was a nationwide ban on the new proliferation  
00:35 15 of large capacity magazines.

16 Q. Okay. And if we turn to page 96 under Summary, and the  
17 second sentence, Professor Koper concluded: That we cannot  
18 clearly credit the ban with any of the nation's recent drop in  
19 gun violence. Correct?

00:36 20 A. I'm just trying to find --

21 Q. Yes, it's in the second sentence under that first  
22 paragraph under Summary.

23 A. Yes.

24 Q. And you agree that this was the best conclusion with  
00:36 25 respect to overall gun violence; correct?

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1 A. Yeah, that does make sense to me.

2 Q. And you believe that a ban on handguns would save more  
3 total lives than a ban on ammunition magazines capable of  
4 holding more than 10 rounds; correct?

00:36 5 A. You know, as I mentioned they go in different directions;  
6 handguns go to overall violent crime, and bans on large  
7 capacity magazines go to active and public mass shooting  
8 events. And so one has a bigger affect on one and one has a  
9 bigger affect on the other.

00:36 10 Q. So putting those two things together, you believe that a  
11 ban on handguns would save more total lives than a ban on  
12 ammunition magazines capable have holding more than 10 rounds;  
13 correct?

14 A. I think that that's true. Of course we don't have the  
00:37 15 degree of evidence on handgun bans, but in general I think one  
16 of the reasons why the U.S. has much a higher homicide rate  
17 for example than our international competitors is that we do  
18 have such a prevalence of handguns floating around the  
19 country.

20 Q. And if we could reduce overall gun deaths by 10 percent,  
21 many more lives would be saved than if we eliminated all mass  
22 shootings; correct?

23 A. You know, there's an upward trend in mass shootings that  
24 I'm concerned about, but at least for the current level that  
00:37 25 we have been observing over the last decade or so, you would

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1 save more lives with 10 percent reduction the overall  
2 homicides.

3 Q. Are you aware of any single mass public shooting in New  
4 Jersey since 1990?

00:38 5 A. No, I'm not.

6 Q. How about in the last 50 years?

7 A. You know, I wouldn't be aware because I haven't looked  
8 back prior to 1990 on that.

9 Q. And the police are extremely good at reducing crime;  
00:38 10 correct?

11 A. Well, that's a broad statement; I do think police are a  
12 critical element in the battle against crime, yes.

13 Q. Let's play from your deposition page 125 [sic - 126],  
14 starting at line 16.

00:38 15 (Portion of videotaped deposition shown:

16 A. ...police are extremely good at reducing crime.)

17 BY MR. PATTERSON:

18 Q. Do you recall giving that testimony at your deposition?

19 A. I saw myself do it, so I recall that.

00:39 20 Q. And you're aware plaintiffs are asserting a takings claim  
21 in this case; correct?

22 A. Yes.

23 Q. And if we assume just for the sake of this question that  
24 that claim has merit, and New Jersey must compensate existing  
00:39 25 magazine owners before it can constitutionally implement its

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1 magazine capacity limit, it would be worthwhile to consider  
2 the cost of that compensation to the state to determine  
3 whether New Jersey would be better served by instead using  
4 those resources to expand its police force; correct?

00:39 5 A. Right, although I did tell you I thought the premise of  
6 your counterfactual was extremely remote.

7 Q. Right. But accepting that premise for the sake of  
8 argument, you agree with the conclusion that I asked you  
9 about; correct?

00:39 10 A. As I think I mentioned at the deposition, you always want  
11 to consider are you allocating resources to reduce crime in  
12 the most effective way. So if the state had to spend a lot of  
13 money on X, I'd want to know how much and think about, you  
14 know, what's the best way to allocate that money.

00:40 15 Q. And you have not done such a cost benefit analysis in  
16 this case assuming the takings claim had merit; correct?

17 A. Yeah, because I assumed the taking claim was frivolous.

18 Q. Okay. And you believe that having a smaller magazine  
19 will force shooters to reload more often, thereby allowing  
00:40 20 potential victims an opportunity to intervene or escape;  
21 correct?

22 A. I'm sorry; is there a way to repeat the question --

23 Q. I'll ask it again. You believe that having smaller  
24 magazines would force mass shooters to reload more often,  
00:41 25 thereby allowing potential victims an opportunity to intervene

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1 or escape; correct?

2 A. Yes, I do.

3 Q. So if we turn to tab 9, this is a study by Professor Gary

4 Kleck called Large Capacity Magazines and Casualty Counts in

00:41 5 Mass Shootings, The Plausibility Of Linkages. You're familiar

6 with this study; correct?

7 A. I am.

8 Q. And this was published in Justice and Research Policy,

9 that's a peer-reviewed publication; correct?

00:41 10 A. I believe it is.

11 Q. Okay. If we turn to page 44, and the paragraph just

12 above Conclusions.

13 A. Okay.

14 Q. Professor Kleck says: In sum, in nearly all LCM involved

00:41 15 mass shootings, the time it takes to reload a detachable

16 magazine is no greater than the average time between the shots

17 that the shooter takes anyway when not reloading.

18 That's what Professor Kleck says; correct?

19 A. That's what he said, yes.

00:42 20 Q. And by LCM do you understand Professor Kleck to mean a

21 magazine capable of holding more than 10 rounds of ammunition?

22 A. Yes.

23 Q. Okay. Now, I'm going to ask another hypothetical, I'll

24 ask you to assume a premise. If you assume that Professor

00:42 25 Kleck's premise were true, if mass shooters do not shoot at a

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1 rate that would be affected by having to pause and change  
2 magazines, you agree that the conclusion may follow that a  
3 magazine capacity limit would not make a difference in those  
4 situations; correct?

00:42 5 A. You know, this -- this sentence that we're on is so  
6 bafflingly incorrect that it's hard for me to comment on it,  
7 other than to say that is completely wrong and should not be  
8 considered as valid evidence in this or any other case.

9 Q. My question is asking you to assume that the premise is  
00:43 10 true, that mass shooters do not shoot at a rate that would be  
11 affected by having to pause and change magazines; so if we  
12 assume that premise is true, I understand you disagree, you  
13 agree that the conclusion may follow that a magazine capacity  
14 limit would not make a difference in those situations,  
00:43 15 correct?

16 A. You know, I do not agree with that.

17 Q. Okay. Well, let's --

18 THE COURT: Next question.

19 MR. PATTERSON: Okay.

00:43 20 THE COURT: I don't think you can ask him a  
21 hypothetical and ask him to assume facts that he believes  
22 aren't true; it doesn't make any sense to me. Let's go to the  
23 next question.

24 MR. PATTERSON: Okay.

00:43 25 BY MR. PATTERSON:

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1 Q. So if we turn to page 45 of Professor Kleck's article.

2 A. Okay.

3 Q. Right above the Declaration of Conflicting Interests,  
00:44  
4 Professor Kleck discusses the federal law requiring background  
5 checks, but explains that these only apply to purchases from  
6 licensed gun dealers; correct? There's a sentence starting  
7 there's already a federal law requiring background checks, but  
8 it only applies to purchases from licensed gun dealers.

9 A. And which paragraph are we in?

10 Q. The last full paragraph on page 45, before the  
00:44  
11 Declaration of Conflicting Interests.

12 THE COURT: You're in the right spot.

13 A. Yes, I do see that.

14 Q. Okay. And Professor Kleck continues: Extending these  
00:44  
15 checks to cover private gun transfers that is implementing a  
16 federal universal background check, is far more likely to  
17 prevent significant numbers of gun crimes than measures aimed  
18 at rarely used gun technologies like LCMs and extremely rare  
19 types of violent incidents like mass shootings.

20 Do you agree with Professor Kleck that implementing a  
21 federal universal background check would be more likely to  
22 prevent significant numbers of gun crimes than measures aimed  
23 at limiting magazine capacity?

24 A. I mean I do think universal background checks would be a  
00:45  
25 good idea; whether they would address the same problem as a

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1 large capacity magazine ban though, remember Adam Lanza killed  
2 26 people in Newton because his mother had made the guns  
3 available to him, so he didn't need to go through a universal  
4 background check, and many of the mass shooters are in that  
00:45 5 category.

6 So again it goes back to this overall crime issue  
7 versus the mass shootings issue, and I do think maybe  
8 universal background checks would have a greater impact on  
9 overall crime, and the large capacity magazine ban would have  
00:45 10 the greater impact in reducing the death toll and wounding  
11 from mass shootings.

12 Q. Let's go back to your declaration, paragraph 40.

13 A. Okay.

14 Q. Actually on page 22, the last sentence of paragraph 40,  
00:46 15 begins: An effective ban on high capacity magazines would  
16 likely have significantly reduced the number of deaths at the  
17 Las Vegas concert because Stephen Paddock would have only been  
18 able to fire one-third the number of bullets he did had he  
19 been forced to rely on guns with only 10 bullets in each  
00:46 20 magazine instead of the 30 he used.

21 Correct?

22 A. Yes, that's what it says.

23 Q. And Paddock actually used magazines capable of holding up  
24 to 100 rounds; correct?

00:47 25 A. Yes. I do need to go back and verify exactly the

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1 magnitude that he had available, but clearly it was well in  
2 excess of 10.

3 Q. And it was well in excess of 30; correct?

4 A. I think that's right, and at the time I wrote this I must  
00:47 5 have been relying on inaccurate information.

6 Q. And the plaintiffs in this case are not seeking a right  
7 to own 100-round magazines; correct?

8 A. That's -- that's correct.

9 Q. And they aren't even seeking to own 30-round magazines;  
00:47 10 correct?

11 A. That's correct.

12 Q. Returning to that sentence in paragraph 40, you said:  
13 That an effective ban on high capacity magazines would likely  
14 have significantly reduced the number of deaths at the Las  
00:48 15 Vegas concert. Correct?

16 A. Yes.

17 Q. And that is because the emphasis on the word effective is  
18 because of the law on the books does not actually prevent a  
19 would be mass shooter from obtaining a banned magazine, any  
00:48 20 potential benefits from the use of smaller magazines would not  
21 be realized; correct?

22 A. Well, the point I was trying to make is if we could have  
23 kept the high capacity magazine away from Stephen Paddock,  
24 many more individuals would have been saved, and that's true  
00:48 25 whether he used 30, 100 or 15, the smaller the magazine, the

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1 less death and mayhem there would have been.

2 Q. I understand that's your testimony --

3 THE COURT: What do you mean by effective ban?

4 THE WITNESS: You know, obviously it's hard to

00:49 5 identify what would happen in any single case. I was just

6 trying to say that if we could have kept large capacity

7 magazines away from one of the single worse mass shooters this

8 would have been beneficial. But --

9 THE COURT: So does an effective ban mean a ban of

00:49 10 all magazines?

11 THE WITNESS: You know, I do think that, for

12 example, the federal assault weapon ban was beneficial and

13 reduced the number of serious gun massacres, and that did

14 restrict large capacity magazines to 10 from the period 1994

00:49 15 to 2004. So, to me it's very regrettable that that ban was

16 allowed to lapse in 2004, and New Jersey is trying to bring us

17 back to where we were with the federal assault weapon ban, and

18 I think that's a wise move to follow New York and Maryland and

19 California and many other states that have adopted this

00:50 20 approach.

21 THE COURT: Okay, thank you.

22 Next question.

23 BY MR. PATTERSON:

24 Q. Only eight states in the nation have a 10-round magazine

00:50 25 capacity limit; correct?

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1 A. I think that's the correct number.

2 Q. Even if a particular state chooses to make it harder for  
3 some would-be killers to get their weapons, these efforts can  
4 be undercut by the jurisdictions that hold out from these  
5 efforts; correct?

6 A. It's clear that states that, you know, lag in their gun  
7 regulation impose burdens on neighboring states.

8 Q. And Pennsylvania does not have a magazine capacity limit;  
9 correct?

10 A. Not to my knowledge, no.

11 Q. Are you aware that there is a gun shop in Pennsylvania  
12 legally selling magazines in excess of 10 rounds less than 10  
13 miles from this court -- or less than two miles from this  
14 courthouse? Sorry.

15 A. Yeah, I wouldn't know the geography that well, I'm in  
16 California now.

17 Q. Is there any reason to believe that someone like Stephen  
18 Paddock looking to commit a copycat crime in New Jersey, would  
19 not simply drive to Pennsylvania to get magazines if he  
20 thought they would make a difference to the outcome of his  
21 attack?

22 A. Yeah, I think you can't stop all of the mass shootings.

23 You mentioned universal background check, Stephen Paddock  
24 could have passed the universal background check, but I still  
25 think universal background checks are a good thing even though

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1 they aren't perfect, and bans on large capacity magazines  
2 won't stop every illegal use, but I think they are beneficial.  
3 Q. To carry out a mass shooting in New Jersey a person would  
4 need to be willing to break a number of other laws other than  
00:51 5 those at issue in this case; correct?

6 A. To carry out a mass shooting?

7 Q. Yes.

8 A. I mean if you're shooting people then you're violating --

9 Q. Shooting people is against the law; correct?

10 A. Yes.

11 Q. And since New Jersey is not a right-to-carry state no one  
12 can expect to lawfully have a gun of any kind accessible to  
13 them at all times in the State of New Jersey; correct?

14 A. That's right.

00:52 15 Q. And the type of mass shootings you are focused on tend to  
16 happen in public; correct?

17 A. Yes.

18 Q. Most of the mass shooting incidents you discussed in your  
19 declaration, the shooters used magazines in excess of 15  
00:52 20 rounds; correct?

21 A. Yeah, most of them, yes.

22 Q. And New Jersey already banned magazines of that capacity  
23 before enacting the current law; correct?

24 A. Yes, it's had a 15-round limit for some time.

00:52 25 Q. And some of the incidents you cite occurred in schools;

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1 correct?

2 A. Some of them did occur in schools, yes.

3 Q. And it's generally unlawful to carry a gun on school  
4 grounds; correct?

00:53 5 A. Yeah, for members of the public as opposed to police or  
6 security guards.

7 Q. Someone willing to break other laws including those  
8 against murder, will not be deterred from using a particular  
9 ammunition magazine simply because New Jersey makes it

00:53 10 illegal; correct?

11 A. You know, again, remember, Adam Lanza only was able to  
12 use large capacity magazines because his mother had lawfully  
13 bought them and kept them in the home. This was a person who  
14 hadn't left his room for months at a time, he was not in a  
00:53 15 position to drive two miles across state lines, he used what  
16 was available. And that's again one of the benefits of having  
17 bans on large capacity magazines, you keep them from being  
18 stolen and used by individuals who, you know, suddenly have  
19 them available as many of the mass shootings have occurred.

20 Many of the mass shooters did not seek out large capacity  
21 magazines, they just used what was easily available, and it  
22 would have been hard or impossible for many of those mass  
23 shooters to seek out other magazines.

24 THE COURT: So could you repeat your question?

00:54 25 And, Doctor, this time you have to answer the

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1 question.

2 Q. Someone willing to break other laws including those  
3 against murder, will not be deterred from using a particular  
4 ammunition magazine simply because New Jersey makes it  
00:54 5 illegal; correct?

6 A. Will not be deterred by the fact that it is illegal?

7 Q. Yes.

8 A. I mean if what you mean is deterred by the fact of a  
9 legal prohibition --

00:54 10 THE COURT: You don't understand the question then?

11 You have to use another word besides deterred.

12 MR. PATTERSON: Okay.

13 THE COURT: Or you have to define it.

14 Q. Well, by deterred I mean they will choose -- someone  
00:55 15 willing to break other laws including those against murder,  
16 will not choose to refrain from using a particular ammunition  
17 magazine simply because New Jersey has made it illegal;  
18 correct? If that magazine were otherwise available to them.

19 A. Yeah, if they want to kill a lot of people they will use  
00:55 20 whatever they have available.

21 Q. Okay. Let's turn to tab 10, and this is Firearms and  
22 Violence, A Critical Review, this is another National Research  
23 Council report or excerpts from it anyway. You're familiar  
24 with this report; correct?

25 A. Yes.

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1 Q. So for New Jersey's law to be successful, it must  
2 frustrate would-be killers' efforts to obtain the banned  
3 magazines in the first place; correct?

4 MR. SHOWELL: Judge, I've got to object to that. I  
00:56 5 think it's lacking utterly any kind of foundation and just  
6 purely a speculative question.

7 THE COURT: If you know.

8 THE WITNESS: It is sort of vague and speculative.

9 BY MR. PATTERSON:

10 Q. Okay. But we just -- you just agreed that if these, I  
11 believe, magazines are not available to a mass killer, they're  
12 not going to choose not to use it simply because it's illegal;  
13 right?

14 MR. SHOWELL: Judge, I've got to object again; these  
00:57 15 magazines is vague, I don't know what he's --

16 Q. Magazines capable of holding more than 10 rounds of  
17 ammunition.

18 A. Yes.

19 Q. Okay. So if we turn to page 8 of this Firearms and  
00:57 20 Violence excerpt. Under Restricting Access, the National  
21 Research Council, this is the first paragraph there, says:  
22 Firearms are bought and sold at markets both formal and  
23 informal; to some observers to suggest that one method for  
24 reducing the burden of firearm injuries is to intervene in  
00:57 25 those markets as to make it more expensive, inconvenient or

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1 legally risky to obtain firearms for criminal use or suicide.

2           Correct?

3 A. Yes.

4 Q. And then skipping down to the last paragraph on that

00:57 5 page, they state: Arguments for and against a market based

6 approach are now largely based on speculation, not evidence

7 from research. Correct?

8 A. Yeah, that's what they said in 2004.

9 Q. Okay. And if we turn to -- let's turn back to tab 8.

00:58 10 Which was Professor Koper's study of the federal ban.

11 A. Yes.

12 Q. And we'll turn to page 96 again. And under Summary it

13 says: Although the ban has been successful in reducing crimes

14 with AWs - which in this context means assault weapons;

00:58 15 picking up with the quote: Any benefits from this reduction

16 are likely to have been outweighed by the steady or rising use

17 of non-banned semi-automatics with LCMs which are used in

18 crime much more frequently than AWs.

19           THE COURT: I'm sorry; what page are you on?

00:59 20           MR. PATTERSON: I'm on page 96, your Honor.

21           THE COURT: Thank you.

22           MR. PATTERSON: Under Summary.

23 Q. And by LCMs, Professor Koper means magazines capable of

24 holding more than 10 rounds of ammunition; correct?

00:59 25 A. That's correct.

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1 Q. And Koper found that the criminal use of 11-plus-round  
2 magazines held steady or even increased during the 10-year  
3 federal ban; correct?

4 A. I'm not sure exactly on that precise point what Koper  
00:59 found.

6 Q. Okay. But he stated that: Any benefits from the  
7 reduction and use of AWs are likely to have been outweighed by  
8 the steady or rising use of non-banned semi-automatics with  
9 LCMs. Correct?

10 A. Right, and again he's referring to overall violent crime  
00:59 here.

12 Q. Right. You believe that the incidents of mass shootings  
13 was reduced by the federal ban; correct?

14 A. I do.

15 Q. If we turn to tab 11, there is an article here entitled  
16 Tenuous Connections Involving Mass Shootings, Mental Illness,  
17 And Gun Laws, by James Alan Fox and Emma Fridel; do you see  
18 that?

19 A. Yes.

20 Q. And this was published in the journal Violence & Gender  
01:00 in 2016; correct? According to the paper here.

22 A. Yes, that's what it says.

23 Q. And that is a peer-reviewed journal; is that right?

24 A. Violence & Gender; I've never heard of it.

25 Q. Okay. You don't have any reason to believe it's not a

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1 peer-reviewed journal, do you?

2 A. Yeah, I don't have any reason not to think it's a  
3 peer-reviewed journal, but I've never heard of it.

4 Q. You believe James Alan Fox is a respected researcher;  
01:01 5 correct?

6 A. You know, he's -- he's a serious researcher; I have  
7 problems with some of his work, but, you know, I'd be  
8 interested to see what he says.

9 Q. And you agree that he's respected; correct?

10 A. You know, he's -- he's a well-known researcher.

11 Q. Okay. Let's play your deposition, page 35, starting at  
12 line 6.

13 (Portion of videotaped deposition shown:

14 A. You know, that's some research that is being  
01:01 conducted by Michael Siegel and James Alan Fox, who are  
15 two criminal justice oriented researchers.

16 Q. Are those well-respected researchers?

17 A. I think they are respected.)

18 BY MR. PATTERSON:

19 Q. Do you recall giving that testimony?

20 A. I think you asked me well-respected and I said respected.

21 Q. And you weren't willing to even give me that much here,  
22 so that's why we played it.

23 So if you turn to page 16, in the last paragraph on the  
01:02 24 page, the authors of this paper write in the second sentence

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1 of that paragraph: Despite the good intentions of the ban --  
2 and they're talking about the federal assault weapon ban.  
3 Picking back up that quote: Its impact on mass killings was  
4 negligible.

01:02 5 Do you agree that's what the authors here state;  
6 correct?

7 A. So we're on page --

8 Q. On page 16, the last paragraph on the page, second  
9 sentence.

01:02 10 A. Last paragraph on the page; yeah, that's what it says.

11 MR. PATTERSON: Your Honor, I would like to move  
12 this document into evidence also. If the State would like  
13 until 1:00 to make any objection we would be fine with that.

14 THE COURT: Do you wish to wait --

01:03 15 MR. SHOWELL: I wish to be heard on that, Judge.

16 THE COURT: All right. You can be heard.

17 MR. SHOWELL: It's a lengthy journal article, you  
18 know, I haven't seen this before, I don't know whether the  
19 source of the peer-reviewed journal -- I know nothing about

01:03 20 this. These binders were put together well before this  
21 morning, there's no reason that plaintiffs could not have  
22 shared this material with us last night and given us a chance  
23 to evaluate it. We agreed on common exhibits a week ago,  
24 Judge. I'm just -- I'm baffled by stuff popping out of the  
25 woodwork at the last minute here.

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1 MR. PATTERSON: We also agreed that impeachment  
2 materials could be excluded from the exhibit list explicitly.

3 MR. SHOWELL: And we also agreed that those  
4 impeachment materials would not be sought to be admitted as  
01:04 5 substantive evidence. So I think that pretty much settles it  
6 right there, Judge.

7 MR. PATTERSON: I don't recall that aspect of the  
8 agreement, your Honor.

9 THE COURT: Well, at any rate --

01:04 10 MR. SHOWELL: That was definitely agreed to.

11 THE COURT: Mr. Showell, I'll listen to any  
12 arguments you have -- I said 1 o'clock, but we usually break  
13 for a half hour right after lunch, and I'll make a  
14 determination at that time. So we'll reserve on tab 11.

01:04 15 BY MR. PATTERSON:

16 Q. Okay. If we go to tab 12 now. This exhibit is in  
17 evidence, it's America's Experience With the Federal Assault  
18 Weapon Ban 1994 to 2004, and if you turn to -- two pages  
19 you'll see in particular, a few pages, the heading is chapter  
01:05 20 12, America's Experience With the Federal Assault Weapons Ban  
21 1994 to 2004 by Christopher S. Koper; correct?

22 A. Yes.

23 Q. And if you turn to page 166, in discussing the federal  
24 assault weapons ban, the first full paragraph --

01:05 25 THE COURT: I'm sorry; you lost me.

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1 MR. PATTERSON: Sorry, your Honor; page 166.

2 THE COURT: I didn't catch the tab.

3 MR. PATTERSON: Oh, tab 12; I'm sorry.

4 THE COURT: Sorry, I was on -- so that's reducing  
01:05 5 guns in America?

6 MR. PATTERSON: Reducing gun violence in America,  
7 correct.

8 THE COURT: But you said it was by --

9 MR. PATTERSON: Well, this is a book and so we  
01:05 10 edited by Daniel Webster, and we're looking at a chapter  
11 written by Christopher Koper in that book. So on page 166 is  
12 where we are.

13 BY MR. PATTERSON:

14 Q. And the first full paragraph on that page, Professor  
01:06 15 Koper says: That it was also difficult to judge the ban's  
16 effects on the more specific problems of mass shootings.

17 Correct?

18 A. Yes.

19 Q. And you did not acknowledge this chapter by Koper in your  
01:06 20 declaration; correct?

21 A. Yeah, I have better and more recent evidence.

22 Q. Okay. And you rely on Louis Klarevas' analysis to  
23 support your claim that the federal ban reduced mass  
24 shootings; correct?

01:06 25 A. I do.

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1 Q. And you like to replicate someone's results before you  
2 are fully comfortable adopting their methodology; correct?

3 A. As a general matter if I can, that's nice to do.

4 Q. And you have not tried to replicate Klarevas' results;  
01:07  
5 correct?

6 A. I've evaluated it, and everything seems appropriate, but  
7 if you mean I went through every one of his cases, I have not  
8 done that.

9 Q. You have not subjected Klarevas' work to the same degree  
01:07  
10 of scrutiny you have subjected John Lott's work on  
11 right-to-carry laws; correct?

12 A. Yes, as I mentioned I worked for 20 years on the  
13 right-to-carry issue and I haven't worked for 20 years on  
14 issues about large capacity magazines.

15 Q. So the answer is you have not subjected Klarevas' work to  
16 the same degree of scrutiny that you have subjected John  
17 Lott's work on right-to-carry laws; correct?

18 A. Again because it's a simpler problem and doesn't really  
19 require the same degree, but yes, I have not.

20 Q. Okay. And Klarevas' data is based on an analysis of  
21 incidents where six or more people were killed; correct?

22 A. That's correct.

23 Q. Gun researchers often define a mass shooting to include  
24 incidents with four or more people killed; correct?

25 A. Yeah, there are many many different definitions of mass

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1 shootings, and Klarevas focuses on six or more which he calls  
2 gun massacres.

3 Q. Are you aware that Klarevas himself defines a mass  
4 shooting to be an incident in which at least four people were  
01:08 5 shot in a single incident regardless of whether it occurred in  
6 public?

7 A. In the work that I was relying on I was looking at his  
8 gun massacre data which defined a gun massacre as six or more  
9 deaths killed in a single incident.

10 Q. And are you aware that in analyzing gun massacres  
11 Klarevas limited himself to incidents in which six or more  
12 people were killed due to a lack of resources?

13 A. I'm not sure what you mean by that.

14 Q. Well, turn to tab 13, and this is excerpts from Klarevas'  
01:09 15 book, Rampage Nation.

16 A. Okay.

17 Q. And if we turn to page 303, and there's footnote 84  
18 there. It's the last page in this excerpt.

19 A. Okay.

20 Q. And it says: Because research funding was not available  
21 to me, I didn't have the resources to search out and catalog  
22 every mass shooting, at least four people shot in a single  
23 incident, that occurred in the United States since 1966.

24 Correct?

25 A. That's correct.

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1 Q. And then in the next sentence he says: Just tracking  
2 down the mass shootings where five people were shot to death  
3 would likely more than doubled my data set. Correct?

4 A. That's correct.

01:10 5 Q. And you discussed earlier the 2013 report by the National  
6 Research Council, the 2013 report for which you served as a  
7 reviewer; correct?

8 A. Yes.

9 Q. So let's turn back to that, it's at tab 4.

01:10 10 A. Tab 4; okay.

11 Q. And if we turn to page 38 out of 64.

12 A. Okay.

13 Q. I think you beat me to it. And the first line on that  
14 page, the National Research Council says: Whether gun  
01:10 15 restrictions reduce firearm-related violence is an unresolved  
16 issue. Correct?

17 A. Yes.

18 Q. And then if we turn to page 42, the second -- actually  
19 the third paragraph on that page, third sentence, the National  
01:11 20 Research Council says: That controlling access to guns  
21 through background checks for restrictions on particular types  
22 of firearms remains controversial and requires additional  
23 research; correct?

24 A. So we're on page 42, third paragraph?

01:11 25 Q. Third full paragraph, yes, it starts, community based

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1 programs?

2 A. Yes; and then where in that paragraph --

3 Q. So the first sentence in that paragraph and I can read it  
4 again, it says: Controlling access to guns through background  
01:11 5 checks or restrictions on particular types of firearms remains  
6 controversial and requires additional research. Correct?

7 A. Yes, that's what it says.

8 Q. And then if we look at the paragraph above that one, it  
9 says: Regarding interventions for public mass shootings,  
01:12 10 there is no conclusive information about which policies and  
11 enforcement and prevention strategies might be effective.

12 Correct?

13 A. Yeah, that's what it says.

14 Q. You were aware of these conclusions when you drafted your  
01:12 15 expert declaration in this case; correct?

16 A. Yes.

17 Q. And you did not cite them in your declaration though;  
18 correct?

19 A. No, I did not.

20 Q. And it is your opinion that the problem of mass shootings  
21 in the United States is getting worse; correct?

22 A. Yeah, the active public shootings are clearly rising.

23 Q. Okay. If we turn to tab 14, this is another article by  
24 James Alan Fox and a co-author, this one is on the exhibit  
01:12 25 list and admitted; and it was published in the Journal of

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1 Homicide Studies. Now, is that a peer-reviewed journal?

2 A. Yes.

3 Q. If we turn --

4 THE COURT: I'm sorry; what tab are you on?

01:13 5 MR. PATTERSON: I'm on tab 14.

6 THE COURT: Thank you.

7 Q. And if we turn to page 128, there's a heading that says

8 Myth-Mass Mass Shootings Are on the Rise.

9 A. Um-hmm.

01:13 10 Q. And then the last sentence in the first full paragraph

11 under that heading, says: That mass shootings have not

12 increased in number or overall death toll, at least not over

13 the past several decades. Correct?

14 A. Which page are we on?

01:13 15 Q. We're on page 128, the last sentence of the paragraph

16 under Myth-Mass Shootings Are on the Rise. It says: Mass

17 shootings have not increased in number or overall death toll

18 at least not over the past several decades. Correct?

19 A. Yeah, and he ends his data in 2011 and we've had, you

01:14 20 know, seven additional horrifying years of increases since

21 then.

22 Q. Okay. And you did not cite or acknowledge Fox's study in

23 your declaration; correct?

24 A. I cited the best evidence from the FBI on this.

01:14 25 Q. Well, let's turn to tab 1 of your declaration.

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1 A. Okay.

2 Q. Or tab 1 which contains your declaration.

3 A. Um-hm.

4 Q. Paragraph 23. And under the heading the Problem of Mass

01:15 5 Shootings in the U.S. is Getting Worse, the first paragraph

6 there says: Although the long-term secular trend in overall

7 crime has been benign over the last 25 years, there has been a

8 concurrent upward trend in mass shootings from an average of

9 2.7 event per year in the 1980s, to an average of 4.5 events

01:15 10 per year from 2010 to 2013.

11 And then in the footnote you cite a congressional

12 research service report; correct?

13 A. Yes.

14 Q. So we're going to look at that report, which is at tab

01:15 15. And this report behind tab 15, that indeed is the report

16 that you cited in your declaration; correct?

17 A. Yes.

18 Q. Now, if we turn to page 14, we see there's a chart on

19 page 14, and then underneath that chart there's a paragraph

01:16 20 that begins in consultation with Grant Duwe; do you see that

21 paragraph under the chart?

22 A. Yes.

23 Q. So, is the data that is presented in the remainder of

24 this page, and then the beginning of the next page, the first

01:16 25 line of the next page, is that the data that you relied upon

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1 in your report? On paragraph 23.

2 A. It's hard for me to note right here where the data comes  
3 from, but, you know, I did cite the numbers that I was  
4 referring to from an average of 2.7 mass shootings per year in  
01:17 5 the 1980s to an average of 4.5 from 2010 to 2013.

6 Q. And that's the same results that are shown here; correct?

7 A. Yes.

8 Q. And this is the same report that you referred to;  
9 correct?

01:17 10 A. Yes.

11 Q. Okay. Now, most of that increase from 2.7 to 4.5 took  
12 place from the 1980s to the 1990s; correct?

13 A. Yeah, that was -- that was a biggest part of the  
14 increase.

01:17 15 Q. So it wasn't 2.7 to 4.0; correct?

16 A. 2.7 -- yes.

17 Q. And you did not mention that fact in your declaration;  
18 correct?

19 A. No, I was just pointing out the long-term trend over this  
01:18 20 data period.

21 Q. Okay. And if you compare -- if you want to compare  
22 apples to apples you would want to compare the rate per  
23 capita; correct?

24 A. Yeah, you would certainly refine the analysis in that  
01:18 25 way.

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1 Q. Okay. And if we turn to tab 16, we've put together a  
2 chart here using the population of the United States. And  
3 according to our calculations, you'll see that the number of  
4 mass shootings per hundred million people was actually lower  
01:18 5 from 2010 to 2013 than 1990 to 1999; correct?

6 A. So you're saying incidents per 100,000 --

7 Q. Hundred million.

8 A. So it's up in the last decade, but lower in the '90s.

9 Q. It's lower now today than in the '90s according to our  
01:19 10 calculations; correct?

11 A. That's what your calculation shows.

12 Q. Okay.

13 MR. PATTERSON: And your Honor, we'd like to move  
14 this chart into evidence. I'm expecting an objection from the  
01:19 15 State.

16 THE COURT: It's not his document.

17 MR. SHOWELL: We do have an agreement -- Judge, I  
18 think -- I don't have documentation that there was an express  
19 agreement that cross-examination materials wouldn't be  
01:19 20 admitted, but the ordinary practice is that, you know,  
21 materials used solely for cross-examination aren't admitted  
22 into evidence, and I don't really see a reason for varying  
23 from that.

24 MR. PATTERSON: Your Honor, I'm reading from -- just  
01:20 25 the refresh Mr. Showell's recollection, that the e-mail

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1 reflecting our agreement says: We didn't expect that the list  
2 would preclude either side from introducing other exhibits at  
3 trial for purposes of impeachment during cross-examination.

4 So --

01:20 5 MR. SHOWELL: So it doesn't speak to the --

6 THE COURT: My ruling is the objection is sustained.  
7 It doesn't look like it's the Dr. Donohue's or Mr. Donohue's  
8 chart. You asked him to refer to a chart that you made; I  
9 don't know who made the chart, I don't know anything about the  
01:20 10 facts in the chart. At this point I'm not admitting it into  
11 evidence.

12 MR. PATTERSON: Okay. Thank you, your Honor.

13 BY MR. PATTERSON:

14 Q. And if we extended the data for public mass shootings  
01:20 15 from 2013 to run through 2017, the average 4.5 that you  
16 reported in your report would actually be lower; correct?

17 A. Yeah, I don't have that number right in front of me.

18 Q. So you don't know whether or not it would be higher or  
19 lower.

01:21 20 MR. SHOWELL: Judge, I have to object on the basis  
21 of foundation; he's being asked to testify on the basis of no  
22 data whatsoever. There's nothing on this chart -- even if we  
23 were to take this chart at face value, there's nothing in the  
24 '13 to '17 period reflected on this.

01:21 25 MR. PATTERSON: I'm asking about his knowledge, not

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1 the chart.

2 THE COURT: All right. Why don't you rephrase that  
3 question, because I thought you were asking a question on the  
4 chart, but you're saying you're not.

01:21 5 MR. PATTERSON: Yes.

6 BY MR. PATTERSON:

7 Q. So I'm just asking as a general matter, would you agree  
8 that the number of mass shootings per year from 2014 to 2017  
9 has been less than 4.5 per year?

01:22 10 A. Yeah, I don't want to speculate on that.

11 Q. In paragraph 26 of your declaration, you state that: In  
12 addition to the well-documented overall increase in mass  
13 public shootings in the United States, there's been an equally  
14 dramatic rise of these events in school settings. Correct?

01:22 15 A. Yes.

16 Q. Okay. And if we turn to tab 19, this is a book chapter  
17 called the Menace Of School Shootings In America, by James  
18 Alan Fox and Emma Fridel; correct?

19 A. Which tab?

01:22 20 Q. This is tab 19.

21 A. Um-hmm. So we're back to James Alan Fox.

22 Q. Back to James Alan Fox, yes.

23 A. Seems to be a theme here.

24 Q. And if you turn to page 19, table 1.2 is labeled School  
01:23 25 Shootings And Mass Shootings 1992/93 through 2014/2015. And

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1 if you look at the students killed-per-million column, you  
2 would agree that the number of students killed per million in  
3 school shootings was generally higher in the 1990s than it has  
4 been in the past decade; correct?

01:23 5 A. Higher in the 1990s; I mean that seems to be what this  
6 table is showing.

7 Q. Okay. And if we turn back to page 18 which is just the  
8 facing page of this --

9 A. Yeah.

01:23 10 Q. And the last full paragraph, second sentence, the authors  
11 state: Contrary to the impression that many Americans have  
12 formed from watching media saturation surrounding high profile  
13 school massacres, the number of incidents and of victims both  
14 overall and of students only, were appreciable larger in the  
01:24 15 early 1990s when concerns about school violence were not  
16 center stage in public discourse. Correct?

17 A. Yeah, that's what he says.

18 Q. And you did not acknowledge this study in your  
19 declaration; correct?

01:24 20 A. No, I cited a study that has a very different conclusion.

21 Q. Okay. And you believe that gun control dramatically  
22 reduced mass shootings in Australia; correct?

23 A. I do.

24 Q. And in fact you state that: While there were 13 mass  
01:24 25 public shootings in Australia from 1979 to 1996 there have

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1 been none in the 22 years since. Correct?

2 A. That's right.

3 Q. And that sort of statement is essentially a time series  
4 analysis; correct?

01:24 5 A. Yes.

6 Q. And so that just looks at an extended period of time for  
7 a single jurisdiction; correct?

8 A. That's correct.

9 Q. And the time series analysis does not handle the  
01:25 10 counterfactual well, which is the key to causal analysis;  
11 correct?

12 A. Yeah, in general that's true, yes.

13 Q. Okay. If we turn to tab 20. This is a study called Mass  
14 Shootings in Australia and New Zealand-A Descriptive Study Of  
01:25 15 Incidence, and this was published in the Justice Policy  
16 Journal. Is that a peer-reviewed publication?

17 A. You know, it may be some Australia journal I'm not  
18 familiar with.

19 Q. Okay. And this study compared mass shootings in  
01:25 20 Australia and New Zealand, and if we turn to the paragraph --  
21 or page -- unfortunately the pages in the study are not  
22 numbered, but there's a heading that says Conclusions on that  
23 page.

24 A. All right.

01:26 25 Q. And also a table 2.

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1 A. Page 14, yes, I see Conclusions.

2 MR. PATTERSON: I'll wait for your Honor to get  
3 there.

4 THE COURT: Got it.

01:26 5 MR. PATTERSON: Okay, great.

6 Q. And under Conclusions, the authors state that: The  
7 hypothesis that Australia's prohibition of certain types of  
8 firearms explain the absence of mass shootings in that country  
9 since 1996 does not appear to be supported; rather it can be  
01:26 10 seen that both Australia and New Zealand, a country where  
11 firearms banned in Australia, self-loading long-arms and  
12 pump-action shotguns are still available for the purposes of  
13 target shooting and hunting, have now experienced very similar  
14 periods of time without the occurrence of a mass shooting  
01:27 15 event. Correct?

16 A. That's what it claims.

17 Q. Okay. And then on the next page, in the first full  
18 paragraph there they say that: This finding cannot readily be  
19 explained by differences in population size or preexisting  
01:27 20 differences in the occurrence of mass shootings between the  
21 two countries, both of which were controlled for during the  
22 analyses. Correct?

23 A. That's what it says.

24 Q. And you were aware of this study when you prepared your  
01:27 25 declaration in this case; correct?

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1 A. Yeah, and I really put zero value on this study, it's not  
2 done by reliable researchers.

3 Q. And you failed to mention it in your declaration though;  
4 correct?

01:27 5 A. Yeah, I didn't need to go out of my way to say this is a  
6 worthless study, so I didn't include it.

7 Q. In your declaration you say that there have been no mass  
8 public shootings in Australia since 1996; correct?

9 A. Yes.

01:28 10 Q. If we turn to tab 22 -- actually let's turn to tab 21  
11 first. It's a news article entitled Lockhart Shooting, Geoff  
12 Hunt killed family before killing himself to spare them future  
13 pain inquest hears; and the article states that Kim Hunt, 41,  
14 and her children, Fletcher, 10, Mia, 8, and Phoebe, 6, were  
01:28 15 found dead on their farm in Lockhart in September of 2014.  
16 Skip to the next paragraph, then says: All were killed with a  
17 single gunshot wound.

18 Now, you didn't acknowledge this shooting in your  
19 declaration; correct?

01:29 20 A. Yeah, again, I was referring to sort of the mass public  
21 shootings that the FBI has indicated are on the rise, while  
22 this is a domestic family dispute, and the nature of the  
23 killing is very different. If you compare the mass shooting  
24 events where the people get hit by multiple bullets, it's very  
01:29 25 different, and that's where the large capacity magazines makes

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1 such a difference.

2 Q. Okay. And so you're making a distinction between  
3 domestic events and public events; is that correct?

4 A. That's correct.

01:29 5 Q. Okay. If we turn to tab 22, this is a 2018 article about  
6 an Australia mass shooting in May, saying that the killer is  
7 among seven dead in Osmington. And you didn't include this  
8 one because it also was a domestic incident; is that correct?

9 A. Yes, that's right.

01:30 10 Q. And in your declaration you state that there were 13 mass  
11 public shootings in Australia during the period 1979 to 1996;  
12 correct?

13 A. Yes.

14 Q. And you didn't cite anything for that assertion; correct?

01:30 15 A. No, I didn't.

16 Q. And you have not studied the facts of those incidents  
17 yourself; correct?

18 A. You know what, I have looked at a number of them, I  
19 haven't gone through them all in the same detail that I have  
01:30 20 on certain matters.

21 Q. You haven't independently reviewed the details of each of  
22 those 13 incidents; correct?

23 A. You know, I've -- I had looked at them but I wouldn't say  
24 I've gone through every single one of them.

01:30 25 Q. Okay. If we turn to tab 23, this is an article from the

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1 Journal of Interpersonal Violence. Is that a peer-reviewed  
2 publication?

3 A. I've never heard of it. And it's also by Samara  
4 McPhedran who I did not consider to be a serious researcher.  
01:31 5 I mean she's sort of like the Australian version of the NRA in  
6 action.

7 Q. I understand that's your opinion. Now, if we turn to  
8 page 5, under Method, in that first sentence, kind of the  
9 middle clause there, it says: A mass shooting was defined as  
01:31 10 an event in which four or more people were killed within a  
11 short time period. Correct?

12 A. Yes.

13 Q. Now, if we turn to page 7, table 1, it says, incident  
14 characteristic of mass shooting events, and there are 13  
01:32 15 listed there between 1971 and 1996, and of those 13, nine of  
16 them occurred in private locations; correct? According to  
17 this report.

18 A. Yeah, and this report is wrong. And I have compared this  
19 to more credible recitations of the mass shootings, and not  
01:32 20 only did McPhedran omit some of the public mass shootings, but  
21 she mischaracterized some as private when they were indeed  
22 public. So, essentially, the work of Phillip Alper on this  
23 shows that McPhedran's work is not reliable, does not properly  
24 identify either the number or the character of mass shootings,  
25 and that I've relied on Phillip Alper's work on this matter

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1 and do not rely on McPhedran's work.

2 Q. You did not cite Phillip Alper's work in your  
3 declaration, did you.

4 A. I -- I didn't feel the need to, but that is what I have  
01:33 5 relied upon.

6 Q. Okay. If we turn to page 9, table 2, there's a table  
7 that goes into the details of the nine shootings that took  
8 place according to the authors in a private location, and in  
9 each of them under the offender/victim's relationship, they  
01:33 10 involved the killing of family members or acquaintances; is it  
11 your testimony that this table is incorrect?

12 A. Yes, it both omits certain cases, and remember many of  
13 the mass shootings in the U.S. start with killing the family  
14 member and then go to a school or a public place, that was  
01:34 15 Adam Lanza's case, that was Kip Kinkel's case; I'm concerned  
16 about the ones that go into the public and release mayhem on  
17 the public at large.

18 Q. So it's your testimony that there were 13 mass shootings  
19 in public in Australia from 1979 to 1996.

20 A. No, I'm saying that this table omits some of the public  
21 mass shootings, and mischaracterizes some of the public mass  
22 shootings as private when they are in fact public.

23 Q. And how many public mass shootings were there in  
24 Australia from 1979 to 1996?

25 A. By my count I believe there were seven. I think there

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1 were seven, and for New Zealand there was one.

2 Q. Okay. And in your declaration you report that John Lott  
3 has repeatedly stated that 98 percent of defensive gun use  
4 incidences involve only brandishing firearms and not firing  
5 them; correct?

6 A. Yes, that's what John Lott said many times.

7 Q. And you are very skeptical of these claims; correct?

8 A. I tend to be very skeptical of NRA experts, yes.

9 Q. And you do not express that skepticism in the declaration  
10 you submitted to this Court; correct?

11 A. I was making the point that for years the NRA has been  
12 arguing you only need to brandish a weapon, and I was sort of  
13 taken aback by the claims in this expert report that suddenly  
14 you needed more than 10 bullets to defend yourself.

15 Q. You didn't personally express any skepticism about John  
16 Lott's claims in your declaration, did you.

17 A. I certainly did in my deposition.

18 Q. In your -- but not in your declaration; correct?

19 A. I think that's right.

20 Q. In your declaration you state that: Should law-abiding  
21 citizens confront a situation in which they fire more than 10  
22 rounds in self-defense, they can either reload a new magazine  
23 or use a second firearm. Correct?

24 A. That's correct.

25 Q. And you also state that: Over 400,000 guns a year end up

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1 in the hands of criminals from loss and theft. Correct?

2 A. That's correct.

3 Q. If New Jersey citizens deprived of magazines capable of  
4 holding more than 10 rounds of ammunition decide to purchase  
01:36 5 additional firearms to ensure that they have an additional  
6 firearm available in a situation like the one you described,  
7 would you expect that to lead to additional guns being stolen  
8 by criminals in New Jersey?

9 A. It really calls for speculation.

10 THE COURT: Okay. Next question.

11 Q. What is your basis for asserting that a law-abiding  
12 citizen could simply reload a fresh magazine while under  
13 criminal attack?

14 A. I'm saying that a law-abiding citizen would have that  
01:37 15 capability; whether they would actually do it or not is  
16 another matter, but there would be nothing in the New Jersey  
17 law that would prevent them from doing that if they wanted to  
18 have a second magazine.

19 Q. Do you know how long it takes to change a magazine?

20 A. You know, obviously varies a lot on the person and the  
21 circumstances.

22 Q. Well, what is your understanding of how long it takes to  
23 change a magazine?

24 A. You know, it's -- as I said it does vary quite a bit  
01:38 25 depending on one's facility with guns and the situation in

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1 which one finds oneself, and also where the magazines are  
2 currently stored.

3 Q. Well, for a law-abiding citizen who had a magazine let's  
4 say within arm's reach and they're getting attacked in their  
01:38 5 home, and they're an average, you know, in their handling of  
6 firearms, how much time would it take them to change the  
7 magazine?

8 MR. SHOWELL: Your Honor, I've got to object to  
9 that. There is no foundation for this, it calls for utter  
01:38 10 speculation.

11 THE COURT: Well, if you know from your experience;  
12 if you don't you can just tell us that.

13 A. So you're asking you fired 10 bullets under the  
14 assumption this is New Jersey compliant --

01:39 15 Q. Yes.

16 A. And then you're reaching for the --

17 Q. The second, yes.

18 A. I mean usually if you fire 10 bullets there's no need to  
19 reach for a second one so the episode would be over.

01:39 20 Q. Well, let's say you needed to --

21 THE COURT: You don't know the answer to his  
22 question; is that your response?

23 THE WITNESS: I mean it would be so dependent on the  
24 individual and the person; you know, an extremely adept person  
01:39 25 could do it in a few seconds and someone who's less adept, you

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1 know, 10 or 20 seconds.

2 Q. And what's your basis for that testimony?

3 A. Law enforcement discussions of this issue, and, you know,  
4 various videos of individuals working with large capacity  
01:40 5 magazines or any capacity magazine.

6 Q. If a law-abiding citizen can simply change magazines or  
7 use another firearm after firing 10 rounds, couldn't a mass  
8 shooter do the same?

9 A. They certainly have and can change the magazine.

01:40 10 Q. And isn't a mass shooter who chooses the time and place  
11 of his attack much more likely to have additional magazines  
12 and firearms available to him than an unsuspecting victim?

13 A. You know, if someone is seriously concerned about this  
14 they would have their magazines with their gun presumably in  
01:40 15 the home. So, mass shooters like to have large capacity  
16 magazines so that they don't have to change.

17 Q. So is it your testimony that a mass shooter forced to use  
18 10-round magazines would not be more likely than a  
19 unsuspecting victim to have multiple magazines or firearms  
01:41 20 available to him?

21 MR. SHOWELL: Judge, I just have to hear that again;  
22 that's awfully packed.

23 THE COURT: So could you restate that question?

24 MR. PATTERSON: Yes, okay.

01:41 25 THE COURT: Hopefully a little bit better.

Donohue - Cross - Patterson

1 BY MR. PATTERSON:

2 Q. Okay. Would a mass shooter forced to use 10-round  
3 magazines be more likely to have more multiple magazines  
4 available to him than an unsuspecting victim?

01:41 5 MR. SHOWELL: I'm going to object to that on the  
6 basis of foundation; that calls for utter speculation.

7 THE COURT: Well, if you know from your experience,  
8 Doctor, you can answer the question. If you don't --

9 THE WITNESS: I think it's speculative.

01:41 10 THE COURT: All right. Next question.

11 MR. PATTERSON: That was my last question, your  
12 Honor.

13 THE COURT: All right, thank you.

14 Redirect?

01:41 15 MR. SHOWELL: I have a limited amount of redirect,  
16 but I would ask that maybe we contemplate a lunch break so I  
17 have a chance to confer with my colleagues before commencing  
18 redirect.

19 THE COURT: So we'll break for about an half hour  
01:42 20 until 10 after 1:00, and then we'll reconvene.

21 MR. SHOWELL: That's perfect, your Honor.

22 THE COURT: It might take me a little longer, I have  
23 a call at 1 o'clock, so it might be 1:15 at the most.

24 All right. You may step down.

01:42 25 There's a rumor we might be done today?

Donohue - Cross - Patterson

1 MR. SHOWELL: I think those rumors are baseless,  
2 your Honor.

3 MR. THOMPSON: I will note though for the record,  
4 that Professor Kleck is here, so that we're ready to at least  
01:42 5 start on the last witness, and the State will be able to take  
6 what time it likes on cross-examination.

7 THE COURT: Thank you. I think we should go as far  
8 as we can today.

9 MR. THOMPSON: Yes, your Honor.

01:42 10 (Luncheon recess.)

11 THE COURT: Redirect?

12 MR. SHOWELL: Judge, just a housekeeping matter.  
13 We're going to withdraw our -- the State's going to withdraw  
14 its objection to Gallup poll and journal article evidence.

02:23 15 THE COURT: All right. So they're admitted. Do we  
16 have to mark them separately?

17 MR. PATTERSON: We can either print out or do  
18 another thumb drive, your Honor.

19 THE COURT: Just print them out and we'll put a  
02:23 20 sticker on them. It'll be easier and we'll get it done today.  
21 You can talk to Matt about it, he has the stickers.

22 MR. PATTERSON: Okay.

23 THE COURT: You may proceed, Mr. Showell.

24 MR. SHOWELL: Thank you, your Honor.

02:23 25 //

Donohue - Redirect - Showell

1 (REDIRECT EXAMINATION OF JOHN DONOHUE BY MR. SHOWELL:)

2 Q. Good afternoon, Professor Donohue.

3 A. Good afternoon.

4 Q. You were asked this morning about your work with respect  
02:24 5 to right-to-carry laws; do you recall generally that subject  
6 matter?

7 A. I do.

8 Q. And you were asked specifically about the fact that you  
9 had Panel Data and Lasso Data and Synthetic Control Data in  
02:24 10 order to make the conclusions that you made as a result of  
11 your 20 year study of that issue; is that generally correct?

12 A. That is.

13 Q. Now, you also mentioned that you didn't have that type of  
14 robust data with respect to the large capacity magazine issue;  
02:24 15 is that right?

16 A. That's correct.

17 Q. Now, why is it that you feel comfortable making  
18 conclusions about large capacity magazine issues,  
19 notwithstanding a lack of robust data resulting from 20 years  
02:24 20 of study?

21 A. Well, the issue of the impact of concealed carry is a  
22 much more conceptually complex task; the issue of the  
23 consequence of restricting the size of a large capacity  
24 magazine on mass shootings is not complex, we know it will be  
02:25 25 beneficial, you may argue about how beneficial it will be, but

Donohue - Redirect - Showell

1 the direction of the impact is clear.

2 On the issue of concealed carry, it's uncertain whether  
3 conflicting influences could point us in one direction or the  
4 other, and also the magnitude of the effect. So you need a  
02:25 5 lot more complex analysis in that context, as opposed to the  
6 context of trying to figure out the impact of restricting the  
7 size of magazines, because we have so much evidence from  
8 various mass shootings that it is beneficial for potential  
9 victims if they are not being confronted by these larger  
02:26 10 capacity magazines.

11 Q. You were asked about some studies that were done by  
12 Christopher Koper relating to the effectiveness of the federal  
13 assault weapon ban; do you recall that general area of  
14 testimony?

15 A. Yes, I do.

16 Q. And specifically you were asked about Koper's studies  
17 from I believe 2004 and I think 2013 if I'm not mistaken.

18 A. That's correct.

19 Q. Are you familiar with any of Professor Koper's most  
02:26 20 recent work in that subject matter area? And specifically I  
21 want to direct your attention to what's been marked as  
22 Defendant's Exhibit 68.

23 MR. SHOWELL: And we'll pull it up on the screen  
24 here, Judge.

02:26 25 A. Yes, I am.

Donohue - Redirect - Showell

1 Q. Are you familiar with that specific work by Koper and  
2 others?

3 A. Yes.

4 Q. And the title of that is Criminal Use of Assault Weapons  
02:26 5 and High Capacity Semi-Automatic Firearms-An Updated  
6 Examination of Local and National Sources; correct?

7 A. Yes, that's correct.

8 Q. And that appears to have been published in the Journal of  
9 Urban Health in 2017; right?

02:27 10 A. That's correct.

11 Q. Now, that's more recent than any of the other materials  
12 by Koper that you were asked about this morning by Mr.  
13 Patterson; is that correct?

14 A. That's correct.

02:27 15 Q. Do you know whether -- do you know what conclusion  
16 Professor Koper drew as to the effectiveness of the federal  
17 assault weapon and magazine ban as a result of his 2017 study?

18 A. Yeah, the continuing work has sort of emphasized that the  
19 number of gunshots that are able to be fired in criminal  
02:27 20 episodes, and the number of individuals hit by those gunshots  
21 and the number of wounds that a person who is hit receives,  
22 are all higher with larger capacity magazines.

23 And also there's discussion about the number of  
24 magazines that are in violation of the law that are  
02:28 25 confiscated from criminals during the period of the ban, and

Donohue - Redirect - Showell

1 subsequent to the ban.

2 Q. Can you just read from -- I don't know if you can see it  
3 from there -- where it starts, highlighted from Koper's 2017  
4 study?

02:28 5 THE COURT: So we're still on Exhibit 68?

6 MR. SHOWELL: Yes, it's Defendant's Exhibit 68, your  
7 Honor. And it's page --

8 MR. LUCAS: It's page 7.

9 MR. SHOWELL: It's page 7 of Defendant's Exhibit 68.

02:28 10 Q. Can you just start reading that paragraph where it says  
11 importantly?

12 A. Yeah: Importantly trend analyses suggest that LCM  
13 firearms have grown substantially as a share of crime guns  
14 since the expiration of the federal ban on assault weapons and  
02:29 15 LCMs.

16 Q. Can you continue?

17 A. This implies possible increases in the level of gunfire  
18 and injure per -- can you make that -- per gun attack, during  
19 this time.

02:29 20 THE COURT: I can't read take from where I'm --

21 Q. If you can skip to -- after footnote 1 there in the  
22 right-hand column, if you can skip and read the sentence, the  
23 findings, begins with the findings?

24 A. We're talking about the second column now?

02:29 25 Q. Yeah.

Donohue - Redirect - Showell

1 A. The findings presented in the study suggest the  
2 possibility that greater use of high capacity semi-automatics  
3 has contributed to this upward trend in shootings.

4 THE COURT: Can you just show me where that is --  
02:29 5 oh, I see it. So we are on page 7, column 2.

6 MR. SHOWELL: Correct.

7 BY MR. SHOWELL:

8 Q. Do you recall earlier this morning being asked about the  
9 takings aspect of plaintiff's claims in this action?

10 A. I do.

11 Q. And I believe Mr. Patterson was asking you to do a cost  
12 benefit comparison of monies that might go to a magazine  
13 purchase versus -- by the state, versus spending money on  
14 police; is that -- do you recall generally that area of  
02:30 15 questioning?

16 A. Yes.

17 Q. Are you familiar with Professor Kleck's views on the  
18 effectiveness of police in reducing crime?

19 A. I am.

20 Q. And what are those views?

21 A. He has argued that police are ineffectual in reducing  
22 crime.

23 Q. So then an expenditure on additional police, is the state  
24 throwing its money way according to Professor Kleck?

25 A. That would be consistent with Professor Kleck's belief.

Donohue - Redirect - Showell

1 Q. You were asked also about an article I believe by  
2 Professor Kleck at tab 9 --

3 THE COURT: Before you go to that; on this study,  
4 Mr. Donohue, you had made the distinction in prior studies,  
02:31 5 ones that dealt with crime generally, and ones that dealt with  
6 mass murders as a distinction between --

7 THE WITNESS: Yes.

8 THE COURT: This Koper study, does it apply to just  
9 mass killings or does it apply to the crime generally?

02:31 10 THE WITNESS: Well, he looks at both in that  
11 subsequent report.

12 THE COURT: Okay. So -- all right.

13 Q. You were asked about Joint Exhibit 10, which is a study  
14 by Professor Kleck, Large Capacity Magazines And The Casualty  
02:32 15 Count in Mass Shootings --

16 A. That's number 9?

17 Q. It's tab 9 -- yes, it's tab 9. And you were asked  
18 specifically about page 44. And I believe you were asked  
19 about the specific sentence that I will read.

02:32 20 A. Um-hmm.

21 Q. Actually I'll read the full paragraph.

22 A. Okay.

23 Q. In sum: In nearly all LCM involved mass shootings, the  
24 time it takes to reload a detachable magazine is no greater  
02:33 25 than the average time between shots that the shooter takes

Donohue - Redirect - Showell

1 anyway when not reloading; consequently there's no affirmative  
2 evidence that reloading detachable magazines slows mass  
3 shooters' rates of fire, and thus no affirmative evidence that  
4 the number of victims who could escape the killers due to  
02:33 5 additional pauses in the shooting is increased by the  
6 shooters' need to change magazines.

7 Do you remember being asked about that?

8 A. Yes, I do.

9 Q. And I believe that your testimony was to the effect that  
02:33 10 Professor Kleck's conclusions in that statement were I believe  
11 you said bafflingly incorrect; and I was wondering whether you  
12 could elaborate on why it is you believe that conclusion is  
13 bafflingly incorrect.

14 A. Well, for a number of reasons. One, the methodology that  
02:33 15 he used in this document was terribly flawed; two, his  
16 implementation of the methodology that he used was terribly  
17 flawed; and three, we have many episodes that directly  
18 contradict the conclusion that he has from actual active  
19 shooter incidents.

20 So on all three bases, just the error in methodology,  
21 the error in implementation of the methodology, and  
22 understanding of actual active shooter incidents in the United  
23 States over many years, they all contradict the conclusions  
24 that he reaches in this paper.

25 Q. And just if we can be a little bit more specific on

Donohue - Redirect - Showell

1 Professor Kleck's flawed methodology, in the article, at tab

2 9, can you give me some insights into why you believe

3 Professor Kleck's methodology is flawed?

4 A. Well, for example, if you turn to table 1 of his

02:34 5 recitation of mass shootings, you see he documents a number of

6 different mass shootings; and one of them is about in the

7 middle with a date occurring on April 16th, 2007, Seung-Hui

8 Cho, which was the shooting at Virginia Tech University.

9 And what he's trying to do here is he's trying to say

02:35 10 that mass shooters shoot very slowly so that it doesn't make

11 much difference if you have to replace a magazine. And if you

12 look under seconds-per-shot, which is the third column from

13 the right in this table 1, he lists, you know, roughly 54

14 seconds-per-shot, so in other words, close to a minute per

02:35 15 shoot.

16 Now, anyone who knows anything about the Virginia Tech

17 killing knows it's absurd; this killing was very rapid, 30

18 students were killed in a very very short timeframe. So the

19 idea that there was roughly a minute between shots makes

02:36 20 absolutely no sense. So you wonder how in the world did he

21 mess that up so badly.

22 And what he did was he tried to identify the start of

23 the criminal engagement with the completion of the criminal

24 engagement. And this particular shooter at 7:15 in the

02:36 25 morning had gone to a women student's apartment and killed two

Donohue - Redirect - Showell

1 people at the apartment; he then went home, he changed his  
2 bloody clothes, he posted things on Facebook, and he grabbed  
3 all of the weaponry that he then hours later took back to the  
4 university campus, and unleashed his fury which lasted for a  
02:36 5 few minutes when he killed 30 additional students -- 30  
6 additional people, some of them were teachers as well.

7 So Mr. Kleck adds up that entire duration when for two  
8 and a half hours he wasn't even on the campus, as part of the  
9 mass shooting enterprise. So this is an absurd notion that  
02:37 10 this was any sort of, you know, slow fire and it didn't matter  
11 whether he had large capacity magazines or not. This was  
12 exactly the sort of thing that as mass killer would want,  
13 shooting and killing a lot of people in very short time. So  
14 that gives you just error in implementation, just a simple  
02:37 15 complete misunderstanding of that episode.

16 But the entire idea behind this misses the point that  
17 when you have a high capacity magazine it allows you to fire  
18 off a large number of bullets in a short amount of time, and  
19 that gives individuals around much less opportunity to either  
02:38 20 escape or to try to fight back or for police to intervene; and  
21 that is very valuable for mass shooters.

22 But Mr. Kleck seems to be completely unaware of that,  
23 he just adds up all of the time depending on whether people  
24 are walking between classrooms or hiding out in certain  
02:38 25 places, and so the entire approach is misguided. And if you

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1 go through episode after episode you can see exactly the way  
2 in which this thinking completely misunderstands the value of  
3 bans on large capacity magazines for potential victims.

4 Q. I believe Mr. Patterson also asked you about, you know,  
02:38 5 whether the New Jersey magazine capacity ban would be  
6 ineffective because criminals are just going to disregard the  
7 ban anyway; do you remember questioning about that?

8 A. Yes, I do.

9 Q. Do you think a legislature should avoid passing a law  
02:39 10 because some people won't comply with that law?

11 A. As a general matter that would not be wise.

12 Q. Do you know the frequency with which large capacity  
13 magazines have been used in the United States to defend  
14 against criminal invasion in the home?

15 A. I've been working on a project trying to examine all  
16 defensive gun uses, and I have never seen a case in my  
17 research in which more than 10 bullets have been fired in  
18 defense by someone with a large capacity magazine. So it  
19 could happen, but by all accounts it's an extremely rare  
02:40 20 event.

21 MR. SHOWELL: I have nothing further for this  
22 witness, your Honor.

23 THE COURT: All right, thank you.

24 Well, is there any area of that -- usually I don't  
02:40 25 allow recross, but is there any area that you thought was a

Donohue - Redirect - Showell

1 new subject that was brought up by Mr. Showell and I'll make a  
2 decision?

3 MR. PATTERSON: No, your Honor.

4 THE COURT: No? Okay. Then there is no recross --

02:40 5 MR. SHOWELL: Your Honor, I'm sorry; I think I  
6 misspoke. My Columbo moment, your Honor.

7 BY MR. SHOWELL:

8 Q. While Mr. Lucas is queuing up a graphic, just to orient  
9 your testimony, Professor Donohue --

02:40 10 THE COURT: So you have more questions?

11 MR. SHOWELL: Unfortunately, yes, Judge. But I'll  
12 try to and keep it very brief.

13 THE COURT: All right.

14 Q. You were asked about trends in mass shootings as I  
02:41 15 recall, and it was based on relatively less recent time period  
16 say in the last year or two; do you recall that general  
17 subject matter?

18 A. Yes.

19 Q. Are you familiar with a recent FBI active shooter report?  
02:41 20 And when I say recent, I believe one that was released even in  
21 the spring of this year I believe.

22 A. Yeah, it might have been June or July; it's a very recent  
23 report, yes.

24 Q. And do you have any recollection as to -- and I'm going  
02:41 25 to -- I'll represent to you that --

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1 MR. SHOWELL: We have on the screen, your Honor, a  
2 graphic from a USA Today article covering the release of that  
3 --

4 THE COURT: Is this in evidence, this document?

02:41 5 MR. SHOWELL: It is not. I became aware of it last  
6 night.

7 THE COURT: All right.

8 MR. PATTERSON: Your Honor, we object; we haven't  
9 seen this document, and --

02:41 10 THE COURT: Do you have a copy of the article it's  
11 in?

12 MR. SHOWELL: I do not, your Honor. I can give you  
13 a url for the website.

14 MR. PATTERSON: Your Honor there is isn't something  
02:42 15 we've seen, it wasn't included in the expert report I don't  
16 believe, I don't think this should be considered.

17 MR. SHOWELL: I'll be guided by your ruling, Judge.

18 THE COURT: So you don't want to respond to that?

19 MR. SHOWELL: I think it's relevant to an area that  
02:42 20 plaintiffs opened in their questioning of Professor Donohue  
21 this morning. I became aware of it in preparation of Mr.  
22 Donohue last night. I think it's relevant.

23 THE COURT: The issue I have is it's an FBI report,  
24 but you're not showing the original FBI report, you're showing  
02:42 25 an article.

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1 MR. SHOWELL: For ease of reference in the graphic  
2 which demonstrates a trend. We can pull up the FBI report,  
3 your Honor.

4 THE COURT: All right. I'll allow the testimony.

02:43 5 It seems to me it's a matter of a preliminary injunction, we  
6 try to get this case together as best we could in a short  
7 period of time, there's always a few surprises; it seems to be  
8 relevant testimony, so I'll allow it and I'll allow  
9 cross-examination with regard to same.

02:43 10 So, I do think you should give your adversary the  
11 cites to both this article and to the FBI article so they can  
12 have it an opportunity to look at this.

13 MR. SHOWELL: We will do that, your Honor.

14 THE COURT: So you may continue.

02:43 15 BY MR. SHOWELL:

16 Q. Well, let me ask you this, Professor Donohue; do you need  
17 the USA Today article or a copy of the FBI report to testify  
18 about your understanding of that recent report?

19 A. No, I don't.

02:44 20 THE COURT: They still need to see the underlying  
21 document --

22 MR. SHOWELL: And I have every intention of  
23 providing it to them, your Honor, just -- we can take that  
24 down -- he doesn't need to refer to that for his testimony.

02:44 25 THE COURT: All right.

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1 Q. As far as you recall, did the FBI report, the active  
2 shooter -- the recent active shooter report, present any data  
3 with respect to the magnitude of active shooter incidents over  
4 the last two years?

02:44 5 A. Yeah, the FBI has been looking at this since Newtown, and  
6 the original FBI active shooter report looked at 2000 to 2013,  
7 and now it has extended that data through 2017. So we have  
8 data from the FBI on the prevalence of these active public  
9 shooting episodes over that 18 year period.

02:45 10 Q. And does --

11 THE COURT: From 2000 to 2018?

12 THE WITNESS: 2000 to 2017 were specifically  
13 addressed in this report.

14 THE COURT: Thank you.

02:45 15 Q. And did the FBI active shooter report from this year  
16 identify any trend with respect to the prevalence of mass  
17 shooting incidents?

18 A. Yeah, the original report from 2000 to 2013 noticed the  
19 upward trend, and the subsequent report highlighted that the  
02:45 20 trend continues to be growing. They noted that 2017 was the  
21 highest number of incidents as well as the highest number of  
22 casualties, and it was only a year before that they had said  
23 that same thing where 2016 had been the highest number of  
24 prior casualties.

02:45 25 So it's been a very serious and significant upward

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1 trend. And if you just do the calculation it reflects an  
2 upward trend of 12 percent per year, which is an enormously  
3 fast upward trend and a source of great concern for both the  
4 FBI and I think the public at large.

02:46 5 Q. I want to go back actually -- sorry, Judge; I want to go  
6 back to tab 19 for a minute, specifically with respect to  
7 school shootings. You were asked about the article at tab 19,  
8 *The Menace Of School Shootings in America*, by Fox, et al.

9 A. Um-hmm.

02:46 10 Q. And specifically you were asked about table 1.2. And I  
11 believe -- are you there?

12 A. Which tab again?

13 Q. Tab 19.

14 A. Okay.

02:47 15 Q. Page 19, table 1.2.

16 A. Okay.

17 Q. Is it your understanding that table 1.2 is limited to  
18 fatalities as opposed to comprising data with respect to  
19 fatalities and non-fatal woundings?

02:47 20 A. Yes.

21 Q. And do you have a general understanding as to the ratio  
22 of fatalities to non-fatal woundings in mass shooting  
23 incidents?

24 A. You know, it's -- it does vary, but the concern has been  
02:47 25 that as large capacity magazines proliferate, you get a lot

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1 more casualties in these mass shooting episodes than you had  
2 before. That was what we alluded to earlier about the number  
3 of individuals shot rises, the number of bullets per  
4 individual hit also increases.

02:48 5 Q. Well -- do you believe that a menacing aspect of school  
6 shootings in the United States is the fact that people could  
7 be wounded and not killed?

8 A. Yes, and if you look at some of the mass shootings that  
9 have occurred, they might not fall into the pattern of, you  
02:48 10 know, more than four deaths or more than six deaths; but, you  
11 know, for example Kip Kinkel committed a school shooting in  
12 1998, where he used a 50-round magazine to kill two  
13 individuals and wound 25 students in that particular mass  
14 shooting. And thankfully he was able to be stopped when he  
02:49 15 went to -- when he completed the shooting of the 50 rounds in  
16 his large capacity magazine.

17 Q. So the data presented in this article at tab 19, may be  
18 valid as far as it goes, but it really doesn't address the  
19 whole aspect of the mass shooting phenomenon; isn't that  
02:49 20 right?

21 A. Yeah, and the study that I referenced in my own report at  
22 footnote 15 of my declaration made the point that more  
23 individuals had been killed in schools in mass shootings in  
24 the first 18 years of this century than in the prior century  
02:49 25 combined. So that goes to this point about whether since 2000

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1 we are seeing a problematic rise.

2 MR. SHOWELL: Now, your Honor, I really have no  
3 further questions for this witness.

4 THE COURT: Okay, thank you.

02:50 5 So, do the plaintiffs have any further cross based  
6 on evidence as --

7 MR. PATTERSON: Maybe just a couple questions based  
8 on the new information that they presented.

9 THE COURT: So do you need a few minutes to review  
02:50 10 that information? I mean we can break for 20 minutes or so.

11 MR. PATTERSON: I don't think so, I think I just  
12 want to clarify something.

13 (RECROSS-EXAMINATION OF JOHN DONOHUE BY MR. PATTERSON:)

14 Q. So you referred to the 2018 FBI active shooting report;  
02:50 15 correct?

16 A. Yes.

17 Q. And does that report use the same methodology as the FBI  
18 used in the 2013 report that was also referred to?

19 A. Yes.

20 Q. And that 2013 report is in evidence, DX-36, and on, let  
21 me see, page 5, in the fourth paragraph there, it says: This  
22 is not a study of mass killings or mass shootings. Correct?

23 A. Yeah, I mean you have to be careful about what they were  
24 referring to, they were referring to --

25 THE COURT: I'm sorry, Doctor, when you say they

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1 were referring to, who is they?

2 THE WITNESS: The authors of the FBI report.

3 THE COURT: Thank you.

4 A. They were concerned with the unfolding of shooting  
02:51 5 incidents where someone went into the public with the goal of  
6 killing as many people as possible. And so sometimes, perhaps  
7 when they were changing a large capacity magazine, they were  
8 tackled or brought down, and so it kept it from being a mass  
9 shooting.

02:52 10 But since they wanted to see how these episodes  
11 unfolded, they didn't just want to look at the cases that  
12 involved many deaths, because if you stop a person after two  
13 deaths as they did in the Kip Kinkel Oregon school shooting,  
14 it was an active shooter incident, but it was the reloading  
02:52 15 that presented the opportunity to stop him, and that's what  
16 they wanted to be able to identify. So Kip Kinkel wouldn't be  
17 considered a mass shooting under some definition based on the  
18 number of deaths if the number of deaths were four or greater.

19 Q. So, since this is not a study of mass shootings, it can't  
02:52 20 be used to infer a trend in mass shootings; correct?

21 A. It -- it obviously speaks to the issue of the active  
22 shooter episodes where individuals are going into the public  
23 fora, and what the consequences of those incidents are.

24 Q. Right. But it's not a study of mass shootings; correct?

02:53 25 And I believe your testimony just so I get this --

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1 THE COURT: Wait; one question at a time.

2 MR. PATTERSON: Sure.

3 THE COURT: Do you wish to withdraw that question?

4 MR. PATTERSON: Yes, let me withdraw that question.

02:53 5 Q. Rather than a study of mass shootings, it's a study of  
6 incidents that involved active shooters that may have been  
7 stopped or not, for whatever reason did not reach the level of  
8 what would be called a mass shooting; is that correct?

9 A. It includes the mass shootings as well, it just  
02:53 10 doesn't -- it just doesn't eliminate the public shootings in  
11 which someone for whatever reason is stopped or otherwise is  
12 prevented from killing four or five people. As we talked  
13 about there are many different definitions of mass shootings,  
14 many times they're based on the number of deaths, and the FBI  
02:54 15 report is a little broader than that.

16 Q. Okay. So the FBI report it's your testimony shows that  
17 the number of these active shooting incidents is increasing  
18 even if the number of mass shooting incidents may not be  
19 increasing; is that correct?

20 A. Yeah, and again one has to be clear, because mass  
21 shootings can incorporate some of these domestic violence  
22 disputes if more than four people let's say are dying; and  
23 those follow a different trend than the active shooter  
24 incidents that the FBI is most concerned about and which it  
02:54 25 was authorized to examine after the Newtown shooting, because

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1 that is an issue of particular public policy concern that the  
2 president and the public seems to want to have addressed.

3 Q. Now, I believe it was your testimony that the number of  
4 magazines capable of holding more than 10 rounds of ammunition  
02:55 5 that are being used in these active shooter incidents has been  
6 increasing since the expiration of the federal assault weapons  
7 ban; is that correct?

8 MR. SHOWELL: Judge, I think this is really beyond  
9 the scope of the FBI report.

02:55 10 THE COURT: You kind of opened it up, Mr. Showell,  
11 so I'll allow the question.

12 A. I don't remember testifying on precisely the issue that  
13 you raised.

14 Q. Okay.

02:55 15 THE COURT: But can you answer that question?

16 THE WITNESS: Maybe if you could repeat the  
17 question? I was listening to see if it was something I talked  
18 about before --

19 THE COURT: I allowed him to ask the question.

02:55 20 Frank, can you read back the question?

21 (Question read back by the reporter.)

22 THE WITNESS: I'm not sure that the FBI report  
23 specifically addresses that, although I do believe that to be  
24 true.

02:56 25 BY MR. PATTERSON:

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1 Q. Okay. And if the number of active shooting incidents  
2 using large capacity magazines is increasing, and the number  
3 of active shooting incidents are increasing, but the number of  
4 mass shootings are not increasing, doesn't that undercut your  
02:56 5 assertion that the use of these magazines is beneficial for  
6 would be mass shooters?

7 A. No, because, again, the definition of mass shootings is a  
8 little too imprecise for what we're concerned about. The New  
9 Jersey legislature is not thinking that the restrictions on  
02:57 10 the size of the magazine will be that valuable to stop, you  
11 know, a deranged husband from killing his family; those  
12 killings usually occur while the family is sleeping, and just  
13 one bullet per family member is often enough to complete those  
14 episodes.

02:57 15 The FBI report is looking at the active shooter  
16 incidents where people go into the public forum and there we  
17 do unmistakably see the magnitude of death and destruction is  
18 growing. And in the last year alone, for the first time in  
19 American history, we had four separate episodes where more

02:57 20 than 10 individuals were killed; that's never happened before.  
21 The Stephen Paddock killing in Las Vegas which could only be  
22 done because he had access to large capacity magazines, you  
23 know, represents a degree of killing that was probably  
24 unimaginable years ago.

02:58 25 But this is a very alarming upward trend, and quite

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1 frankly I think it would be irresponsible for any government  
2 not to take steps to address this growing concern.

3 Q. Just one more question, because I'm going to add a  
4 qualification that I hope I can get an answer to the question.

02:58 5 So if the number of more than 10 round ammunitions that are  
6 being used in active shooting incidents is increasing, and the  
7 number of active shooting incidents themselves are increasing,  
8 but the number of mass public shootings is not increasing, if  
9 those things are true, wouldn't that undermine the claim that

02:58 10 LCMs somehow -- a magazine capable of holding more than 10  
11 rounds is somehow beneficial to these active shooters?

12 A. Yeah, now you're asking me to speculate, and I can't go  
13 there.

14 Q. Okay.

02:59 15 MR. PATTERSON: Nothing further, your Honor.

16 THE COURT: All right. So you may step down,  
17 Doctor. Thank you for coming.

18 THE WITNESS: Thank you, your Honor.

19 (Witness excused.)

02:59 20 THE COURT: Are we proceeding with the next witness?

21 MR. THOMPSON: The next witness is here, your Honor.

22 MR. SHOWELL: And the State and plaintiffs had  
23 agreed on a schedule for witnesses that indicated that  
24 Professor Kleck would be presented on Friday and that was what  
02:59 25 the State was preparing to deal with.

1 THE COURT: So, you're not ready.

2 MR. SHOWELL: To answer that with one word, the  
3 answer would be yes, you're correct, your Honor.

4 THE COURT: All right. So, we did agree on that  
02:59 schedule, Mr. Thompson.

6 MR. THOMPSON: Your Honor, we brought Dr. Kleck here  
7 as an accommodation; if the State is not ready the State is  
8 not ready.

9 THE COURT: All right. So we'll proceed tomorrow  
03:00 morning then.

11 MR. THOMPSON: Yes, your Honor. The witness does  
12 have a flight at I believe 7 o'clock tomorrow.

13 THE COURT: How long will it possibly take, two  
14 hours?

15 MR. SHOWELL: I speak slowly, your Honor, but I  
16 can't imagine it would be more than two to three.

17 THE COURT: All right. So we'll start at -- if we  
18 start at 10:30 we should be finished no later than 1:30; if  
19 there is no need for lunch tomorrow we'll just keep going  
03:00 until we finish.

21 MR. THOMPSON: Very well.

22 THE COURT: All right. Any other matters for today?

23 MR. THOMPSON: No, your Honor?

24 MR. SHOWELL: No, your Honor. Thank you.

03:00 25 THE COURT: So I'll see you tomorrow.

1 I don't believe the FBI report was used, he spoke  
2 about it, he didn't address it, it was brought up on  
3 cross-examination; I don't really need to identify that unless  
4 you wish, but I won't admit it into evidence, it was just  
03:01 5 cross.

6 MR. THOMPSON: Thank you, your Honor.

7 (Proceedings concluded for the day.)

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